

# MONTANA ADMINISTRATIVE REGISTER

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PAGES 1-98



# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 1

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE BOARD OF INVESTMENTS  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
8.97.2001, 8.97.2002, 8.97.2003,	)	
8.97.2004, 8.97.2005, 8.97.2006,	)	
8.97.2007, 8.97.2008, and 8.97.2009	)	NO PUBLIC HEARING
pertaining to the Board of	)	CONTEMPLATED
Investments Conservation Reserve	)	
Payment Enhancement Program	)	

TO: All Concerned Persons

1. On February 13, 2024, the Board of Investments proposes to repeal the above-stated rules.

2. The Board of Investments will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please advise the board of the nature of the accommodation needed, no later than 5:00 p.m. on February 9, 2024. Please contact Dan Whyte, Chief Legal Counsel, Board of Investments, 2401 Colonial Drive, Third Floor, Helena, Montana 59601; telephone (406) 444-0587; fax (406) 449-6579; or [dwhyte@mt.gov](mailto:dwhyte@mt.gov).

3. The board proposes to repeal the following rules:

8.97.2001 DEFINITIONS

AUTH: 17-5-1504, 17-5-1521, MCA

IMP: 17-5-1504, 17-5-1521, MCA

8.97.2002 DESCRIPTION AND GOALS OF THE STATE CRP  
ENHANCEMENT PROGRAM

AUTH: 17-5-1504, 17-5-1521, MCA

IMP: 17-5-1504, 17-5-1505, 17-5-1521, MCA

8.97.2003 GENERAL STATE CRP PROGRAM REQUIREMENTS

AUTH: 17-5-1504, 17-5-1521, MCA

IMP: 17-5-1504, 17-5-1505, 17-5-1521, MCA

8.97.2004 ELIGIBILITY CRITERIA FOR STATE CRP PROGRAM

AUTH: 17-5-1504, 17-5-1521, MCA

IMP: 17-5-1504, 17-5-1505, 17-5-1521, MCA

8.97.2005 HOLDBACK FOR ESTABLISHMENT OF COVER - EMERGENCY  
USE OF COVER

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1504, 17-5-1505, 17-5-1521, MCA

8.97.2006 PERMISSIBLE USES OF LOAN FUNDS

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1504, 17-5-1505, 17-5-1521, MCA

8.97.2007 APPLICATION PROCEDURES FOR STATE CRP PROGRAM -  
LOAN REQUIREMENTS FOR THE APPLICANT/BORROWER

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1504, 17-5-1505, 17-5-1521, MCA

8.97.2008 APPLICATION PROCEDURES FOR CRP PROGRAM - LOAN  
AGREEMENT, CLOSING, FUNDING

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1504, 17-5-1505, 17-5-1521, MCA

8.97.2009 DETERMINATION OF LOAN AMOUNT

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1504, 17-5-1505, 17-5-1521, MCA

REASON: Based on the board's periodic review of its rules chapter and other related rules, the board observes that certain rules contain outdated programs and do not reflect current board practices. The repeal of the rules in this notice eliminates rules related to the board's conservation reserve payment enhancement program that is no longer utilized.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing. Written data, views, or arguments may be submitted to: Dan Whyte, Chief Legal Counsel, 2401 Colonial Drive, Third Floor, P.O. Box 200126, Helena, MT 59604-0126; telephone (406) 444-0587; fax (406) 449-6579; or e-mail [dwhyte@mt.gov](mailto:dwhyte@mt.gov) and must be received no later than 5:00 p.m., February 9, 2024.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dan Whyte at the above address no later than 5:00 p.m., February 9, 2024.

6. The board does not anticipate receiving any requests for a public hearing on the proposed action for the reason that the conservation reserve payment enhancement program is no longer utilized, so no persons are directly affected by the proposed action. Neither does the board anticipate receiving a request for public hearing from the appropriate administrative rule review committee of the Legislature. Notice of a hearing, if requested and necessary, will be published in the Montana Administrative Register.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in paragraph four or may be made by completing a request form at any rules hearing held by the Board of Investments.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Dan Whyte  
Dan Whyte  
Rule Reviewer

/s/ Dan Villa  
Dan Villa, Executive Director  
Board of Investments

Certified to the Secretary of State January 2, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I, the amendment of ARM ) PROPOSED ADOPTION,  
17.24.102, 17.24.107, 17.24.116, ) AMENDMENT, AND REPEAL  
17.24.118, 17.24.128, 17.24.132, )  
17.24.141, 17.24.144, 17.24.145, ) (MINING BUREAU)  
17.24.146, 17.24.150, 17.24.159, )  
17.24.166, and 17.24.171, and the )  
repeal of ARM 17.24.165 and )  
17.24.170 pertaining to regulation of )  
hard rock mining and exploration )

TO: All Concerned Persons

1. On February 7, 2024, at 11:00 a.m., the Department of Environmental Quality (department) will hold an in-person public hearing in Room 111 of the Metcalf Building, at 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may also attend the hearing electronically in the following ways:

<https://mt-gov.zoom.us/j/85379599097?pwd=L1c4cmVxRTFTRUNJd0FRQUQvSU5OQT09>  
Passcode: 397909

Or One tap mobile :

+12133388477,,85379599097#,,,,\*397909# US (Los Angeles)

+12063379723,,85379599097#,,,,\*397909# US (Seattle)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 213 338 8477 US (Los Angeles)

+1 206 337 9723 US (Seattle)

+1 646 558 8656 US (New York)

Webinar ID: 853 7959 9097

Passcode: 397909

International numbers available: <https://mt-gov.zoom.us/j/85379599097?pwd=L1c4cmVxRTFTRUNJd0FRQUQvSU5OQT09>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

Meeting ID: 853 7959 9097

Passcode: 397909

SIP: 85379599097@zoomcrc.com

Passcode: 397909



2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on February 1, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-437rule@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I EXPLORATION LICENSE ASSIGNMENT (1) The department may approve the assignment of an exploration license contingent on the following conditions:

(a) The licensee submits to the department a completed application, on a form provided by the department, which includes the name and address of the proposed assignee and the name and address of that person's resident agent, if any.

(b) The assignee commits in writing to conduct the operations in full compliance with the terms and conditions of the license; and,

(c) The assignee certifies they are eligible to hold an exploration license pursuant to the provisions of 82-4-331(3), MCA and provides sufficient bond to guarantee performance of the Act, this subchapter, and the license.

AUTH: 82-4-321, MCA

IMP: 82-4-331, 82-4-332, MCA

REASON: A new rule is appropriate to address instances when the holder of an exploration license assigns an exploration project or entire exploration license to a legal entity. The department is proposing this rule pursuant to its administrative authority conferred by 82-4-321, MCA.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.24.102 DEFINITIONS As used in the Act and this subchapter, the following definitions apply:

(1) remains the same.

(2) "Alternate land use" means, with regard to a mill facility, reclamation of a site to an alternative post-mining land use where the following conditions are met:

(a) The proposed post-milling land use is compatible with adjacent land use, and applicable landowner authorization.

(b) Retention of a structure is consistent with the proposed post-mining land use. This shall be documented through inclusion of a schedule showing how the proposed use will be achieved within a reasonable time after milling and will be sustained.

(c) Plans for alternate land use must be integrated with the requirements of ARM 17.24.169 for the grading and revegetation of the surrounding area.

(d) Plans must document, if appropriate, that financing, attainment, and maintenance of the alternative land use is feasible.

(e) The proposed use will:

(i) not present actual or probable hazard to public health or safety;

(ii) comply with the air and water quality acts; and

(iii) minimize adverse effects on fish, wildlife, and related environmental values.

(2) remains the same but is renumbered (3).

(3) remains the same but is renumbered (5).

(4) remains the same.

(5) remains the same but is renumbered (6).

(7) "Contingency plan" means, with regard to spilled process solution, a plan which includes, but is not limited to, steps for containment, neutralization, and removal, and identification of any associated training needs.

(8) "Description of existing environment" means a description with appropriate maps of the condition of the proposed project area prior to exploration or operation. The description shall provide, but not be limited to, a discussion which characterizes each of the following:

(a) geology;

(b) soils;

(c) vegetation including, but not limited to, canopy cover, diversity, use, and productivity;

(d) wildlife;

(e) hydrology (surface and ground water characteristics, quantity, quality, and use), including maps which identify springs, seeps, and water wells within one mile of the permit boundary and three miles down gradient unless a lesser distance is justified and agreed to by the department;

(f) air quality and climate;

(g) aquatic biology;

(h) land use and ownership;

(i) recreation;

(j) cultural/historic resources identified as a result of inventory and of file searches conducted by the State Historic Preservation Office;

(k) noise;

(l) transportation; and

(m) aesthetics.

(6) and (7) remain the same but are renumbered (9) and (10).

(11) "Expansion of a mill facility" means disturbance of an area not previously disturbed by the milling operation, and, in the case of a waste dump, tailing impoundment, or similar facility, a change in the design capacity that will result in an increase in land disturbance at an existing mill facility. When disturbance of an area not previously disturbed by the operation occurs at a dump, impoundment, or similar facility, the department may regulate the previously disturbed area to the extent necessary to achieve reclamation of the expansion area.

(8) remains the same but is renumbered (12).

(13) "Facility" means any building, impoundment, embankment, waste or tailings disposal site, or other human-made structure associated with a particular activity. Mill facility means a mill and associated structures, disturbance, and development.

(14) "Incremental bond area" is an area within the permit boundary, or plan for exploration or small miner activity, that has been identified for phases or increments of disturbance and the bond has been determined according to ARM 17.24.140.

(15) "Mill" means any facility for ore, tailings, or waste rock processing and disposal. This term does not include smelting, or refining facilities, sample collection processes, and pilot testing performed pursuant to an exploration license.

(9)(16) "Permit area" is the disturbed land as defined in 82-4-303, MCA, area contained within a permit boundary, which includes any and a minimal area delineated around a disturbance area for the purposes of providing a buffer adjacent to all disturbances, and for the purposes of controlling public access to areas permitted under 82-4-335, MCA. Monitoring wells are not required to be within a contiguous permit boundary, but must be permitted. Other activities are to be included within the permit boundary as follows:

(a) through (c) remain the same.

(d) If applicable, the applicant may propose incremental bond areas to reflect the anticipated progress of disturbance during mining or milling activities.

(10) remains the same but is renumbered (17).

(18) "Plan" means the information submitted to the department pertaining to a proposed or ongoing mining or milling related activity which utilizes narratives, engineering designs, maps, cross-sections, or other documentation which adequately describes the activity.

(11) and (12) remain the same but are renumbered (19) and (20).

(13)(21) "Reclamation" means the return of lands disturbed by mining, milling, or mining-related activities to an approved post-mining land use which has stability and utility comparable to that of the pre-mining landscape except for rock faces and open pits which may not be feasible to reclaim to this standard. Those rock faces and open pits must be reclaimed in accordance with 82-4-336, MCA. The term "reclamation" does not mean restoring the landscape to its pre-mining condition. Reclamation, where appropriate, may include, but is not limited to:

(a) through (g) remain the same.

(14) through (16) remain the same but are renumbered (22) through (24).

AUTH: 82-4-321, MCA

IMP: 82-4-303, 82-4-305, 82-4-309, 82-4-310, 82-4-331, 82-4-332, 82-4-335, 82-4-336, 82-4-341, MCA

REASON: Definitions were consolidated from ARM 17.24.165 into ARM 17.24.102. The definitions moved from ARM 17.24.165 to 17.24.102 include: "Alternate land use," "Contingency plan," "Description of existing environment," "Expansion of a mill facility," "Facility," "Mill," and "Plan." The definition of "Facility" was modified to be gender neutral. The definition of "Reclamation" was modified to include some of the parameters from the definition of "Reclamation" in ARM

17.24.165. The definition of "Permit area" was modified to better align with how the term has been used by the department to administer the requirements of the MMRA. The definition also incorporates a reference to "Incremental bond areas." A definition for "Incremental bond areas" was added to improve communication with stakeholders. The use of "Incremental bond areas" is not new as its use is contemplated in ARM 17.24.140. By defining "Incremental bond areas," a clear delineation will exist between what areas have been analyzed for disturbance and what areas are authorized for disturbance as a result of the acceptance of bond.

17.24.107 RECLAMATION REQUIREMENTS—EXPLORATION (1) through (4) remain the same.

(5) ~~When such actions will not obscure significant evidence relating to the possible presence of an ore deposit or physically hinder further development of the claim, all~~ All trenches, bulk sample or discovery pits, and other excavations must be backfilled with the excavated spoil material unless the backfilling will physically hinder the further development of the claim or obscure evidence of an ore deposit. If, following a site investigation and discussions with the licensee, the department confirms the necessity for the excavation to remain open, backfilling requirements may be postponed ~~providing if~~ the licensee remains in compliance with 82-4-331, and 82-4-332, MCA, and ARM 17.24.103, 17.24.105, and 17.24.153.

(6) through (13) remain the same.

AUTH: 82-4-321, MCA

IMP: 82-4-332, MCA

REASON: There is no intent to change the circumstances of when backfilling is required. The amendment to this rule is to clarify the language. The rule already requires the licensee to receive department concurrence to leave an excavation open.

17.24.116 OPERATING PERMIT: APPLICATION REQUIREMENTS (1) and (2) remain the same.

(3) In addition to the information required by 82-4-335(4), MCA, an application for an operating permit must describe the following:

(a) through (k) remain the same.

(l) the ground and surface water monitoring programs to be implemented including a schedule for reporting results to the department; and a contingency plan addressing accidental discharges to ground or surface water;

(m) a contingency plan addressing accidental discharges to ground or surface water;

(m) through (u) remain the same but are renumbered (n) through (v).

(4) The application must include a map or maps to scale of:

(a) the proposed mine permit area and area to be disturbed, including anticipated phases or increments of disturbance, if applicable;

(b) the location of the proposed mine and facilities;

(c) the location and identity of streams within one mile of the permit boundary and three miles down gradient unless a lesser distance is justified and agreed to by the department;

(d) existing and proposed roads;

(e) other constructed features like railroad, oil and gas wells, pipelines and other utility lines in the immediate area;

(f) residences and water wells within one mile of the permit area; and

(g) a uniform base, a scale, and a north directional arrow.

~~(such map must locate the proposed mine and facilities and must locate and identify streams, and proposed roads, railroads, and utility lines in the immediate area; and residences and wells within one mile of the permit area). All maps provided in the application must have a uniform base, a scale, and a north directional arrow.~~

(5) remains the same.

AUTH: 82-4-321, MCA

IMP: 82-4-335, 82-4-336, MCA

REASON: Amendment of ARM 17.24.116 is necessary to clarify the required information an applicant must include in an operating permit application. The addition of a requirement to include a schedule for reporting water quality monitoring results is necessary to ensure DEQ is provided the necessary information for ensuring a mining operation maintains compliance with applicable water quality standards. Additionally, it is necessary to amend ARM 17.24.116 to ensure applicants incorporate increments of disturbance, if applicable, into the maps submitted as part of an applicant's operating permit application to clarify how DEQ should determine the performance reclamation bond required by 82-4-338, MCA. Finally, criteria were added to delineate the streams that should be included on the map of the proposed permit area to clarify the application requirements.

17.24.118 ANNUAL REPORT (1) Each permittee shall file an annual report with the department and pay an annual fee of \$100 within a time period specified in 82-4-339, MCA, until such time as full bond is released. ~~No less than 30 days prior to the permit anniversary date for the annual report, the department shall notify the permittee in writing that an annual report and renewal fee is due.~~

(2) The annual report must include the information outlined under 82-4-339, MCA. In addition, the annual report must include:

(a) the number of acres of land affected by the operation during the preceding year and cumulatively, as well as the disturbance status of incremental bond areas, if applicable;

(b) through (7) remain the same.

(8) If comprehensive water monitoring is required by the permit, field measurements and analytical results shall be submitted in electronic format according to the schedule in the approved monitoring plan. Each ~~each~~ annual report must include:

(a) an evaluation of water monitoring data and trends, which may include a summary of reports or data submitted during the preceding year;

(b) field measurements, analytical results, and data validation from the preceding year, if not previously provided through the department's designated electronic system; and

(c) The evaluation must include time series trend analyses for those key site-specific parameters required by the department in the permit, if not previously provided through the department's designated electronic system.

(9) through (12) remain the same.

~~(13) The department shall, by certified mail, notify a permittee, who fails to file an annual report and fee as required by this rule, that the permit will be suspended if the report and fee are not filed within 30 days of receipt of the notice.~~  
The department shall notify a permittee of a deficiency in reporting or failure to pay the full annual fee as required by this rule pursuant to ARM 17.24.132 and 82-4-362(3), MCA. A deficiency in reporting, as related to annual reports, includes a failure to file:

(a) an annual report;

(b) a complete annual report; or

(c) an accurate annual report.

~~(14) If a permittee fails to file an annual report and fee within 30 days of receipt of a notice, the department shall suspend the permit.~~

AUTH: 82-4-321, MCA

IMP: 82-4-335, 82-4-336, 82-4-337, 82-4-338, 82-4-339, 82-4-362, MCA

REASON: The department will continue to send reminders to operators regarding their annual report. The requirement deadline for submitting the annual report and fee is clearly defined in both rule and statute. DEQ has found reminding operators does not change whether the reports are received timely – the administrative deficiency process provides an additional avenue for communicating with operators if the annual report is not filed timely or if the annual fee is not paid timely. The administrative deficiency also provides a mechanism for DEQ to get annual reports that are complete and accurate. Section 82-4-362(3), MCA, provides the requirement for DEQ to send a notice to an operator and, if applicable, suspend an operating permit if the annual report is not filed or the annual fee is not paid.

#### 17.24.128 INSPECTIONS: FREQUENCY, METHOD, AND REPORTING

(1) The department shall conduct an inspection:

(a) remains the same.

(b) at least three times per year for each active operation that:

(i) and (ii) remain the same.

(iii) exceeds 1000 acres in permit area unless the permit is primarily for mining rock products as defined in 82-4-303, MCA.

(2) and (3) remain the same.

AUTH: 82-4-321, MCA

IMP: 82-4-337, 82-4-339, MCA

REASON: Some rock product operators have large permit areas that exceed 1000 acres and are permitted to have minimal mining disturbances. Rock products are typically quarried or collected from or just below the ground surface. The proposed modification aligns the minimum inspection frequency with the expected impact of the operation.

17.24.132 ENFORCEMENT: PROCESSING OF ADMINISTRATIVE DEFICIENCY NOTICES, WARNINGS, VIOLATIONS, AND PENALTIES (1) The department shall issue an administrative deficiency notice for a deficiency in reporting, record keeping, fee payment, or notification that the department determines is minor in nature, is not substantive, and is unlikely to reoccur. The recipient of an administrative deficiency notice must reply with a written response within 30 days of receipt of an administrative deficiency notice.

~~(1)(2)~~ Except as provided in ~~(4)(5)~~, the department shall send a letter of warning or violation letter for a violation of the Act, this subchapter, or the permit, license, or exclusion; or for failing to address a deficiency identified in an administrative deficiency notice within 30 days of receipt of the administrative deficiency notice. The letter of warning or violation letter must be served and must state that the alleged violator may, by filing a written response within a time specified in the notice, provide facts to be considered in further assessing whether a violation occurred and in assessing the penalty under ~~(2)(3)~~.

~~(2)(3)~~ The department may issue a notice of violation and administrative order for a violation identified in a letter of warning or violation letter. The administrative order may assess a penalty, require corrective action, or both.

(3) and (4) remain the same, but are renumbered (4) and (5).

AUTH: 82-4-321, MCA

IMP: 82-4-337, 82-4-339, 82-4-361, MCA

REASON: ARM 17.24.132 was updated to implement administrative deficiency notices and letters of warning in 82-4-361, MCA, that became effective October 1, 2023 as a result of HB 347. HB 347 allows the department to issue letters of warning, violations, and administrative deficiencies for hard rock mining operations.

17.24.141 BONDING: ADJUSTMENT OF AMOUNT OF BOND (1) through (4) remain the same.

(5) For bond reduction requests by the operator for release of undisturbed land, the department shall conduct an inspection of the proposed area before responding to the request. For the bond reduction request, the operator shall:

(a) submit a map of the area in question;  
(b) revise the appropriate active operation maps; and  
(c) document that the area has not been disturbed as a result of previous operating activities. The department shall then conduct an inspection of the proposed area before responding to the request.

(6) For bond reduction requests by the operator for full or incremental reclamation of previously disturbed lands, the department shall conduct an

inspection of the proposed area before responding to the request. For the bond reduction request, the operator shall:

(a) submit a map or maps showing the location of reclamation and a determination of the area, in acres, that was reclaimed;

(b) revise the appropriate active operation maps; and

(c) submit a description of the reclamation that provides sufficient details to demonstrate compliance with the reclamation plan approved by the department.

(6) and (7) remain the same but are renumbered (7) and (8).

AUTH: 82-4-321, MCA

IMP: 82-4-338, 82-4-341, 82-4-342, MCA

REASON: The rule requires amending to clarify DEQ will inspect the area the operator proposes for bond release prior to responding to the operator. Additional clarification is needed so that operators know what type of information to submit for DEQ to process a bond release request for undisturbed lands compared to previously disturbed lands.

17.24.144 BONDING: SURETY BONDS (1) In addition to the requirements of 82-4-338, MCA, surety bonds are subject to the following requirements:

(a) The department may not accept a surety bond in excess of 10% of the surety company's ~~capital surplus account~~ paid-in surplus or additional paid-in capital as shown on a balance sheet certified by a certified public accountant.

(b) and (c) remain the same.

(d) The surety bond must be submitted on a surety form provided by the department. The surety form may not be modified by the surety beyond populating the necessary surety bond form fields.

(d) through (g) remain the same but are renumbered (e) through (h).

AUTH: 82-4-321, MCA

IMP: 82-4-338, 82-4-341, 82-4-360, MCA

REASON: The rule requires amending to modernize the terminology related to surety company balance sheets. Additionally, the rule requires additional clarification so surety companies are clear the form should not be modified.

17.24.145 BONDING: CERTIFICATES OF DEPOSIT (1) The department may accept as bond an assignment of a certificate of deposit in a denomination not in excess of \$100,000, ~~or the maximum insurable amount as determined by the FDIC or the NCUA and FSLIC, whichever is less.~~ The department may not accept a combination of certificates of deposit for one operator on one institution in excess of that limit.

(2) The department may accept only automatically renewable certificates of deposit from a United States bank or credit union.

(3) and (4) remain the same.

(5) The certificate of deposit assignment must be submitted on a certificate of deposit assignment form provided by the department. The certificate of deposit



assignment form may not be modified by the bank or credit union beyond populating the necessary certificate of deposit bond form fields.

AUTH: 82-4-321, MCA

IMP: 82-4-338, MCA

REASON: The rule requires modernization to specify that the maximum certificate of deposit accepted by the department is based on the federal insurance levels (currently \$250,000). Additionally, the language is updated to reflect the appropriate federal agency responsible for insuring the account. The Federal Savings and Loan Insurance Corporation (FSLIC) is a defunct U.S. government institution that no longer exists. The NCUA was added to address certificate of deposits from credit unions as it is the responsible federal agency for insuring deposits at credit unions. Additionally, clarification is added to specify banks or credit unions may not alter the bond forms provided by the department.

17.24.146 BONDING: LETTERS OF CREDIT (1) The department may accept as a bond a letter of credit subject to the following conditions:

(a) The letter must be issued by a bank or credit union organized or authorized to do business in the United States.

(b) and (c) remain the same.

(d) The letter of credit must provide that, upon expiration, if the department has not notified the bank or credit union in writing that substitute bond has been provided or is not required, the bank or credit union will immediately pay the department the full amount of the letter less any previous drafts.

(e) The letter must not be for an amount in excess of 10% of the bank's or credit union's ~~capital surplus account~~ paid-in surplus or paid-in capital as shown on a balance sheet certified by a certified public accountant.

(f) The department may not accept a letter of credit from a bank nor a credit union for any person, on all permits, licenses, or exemptions held by that person, in excess of three times the company's maximum single obligation as provided in (e) ~~above~~.

(g) The letter of credit must be submitted on a letter of credit form provided by the department. The letter of credit form may not be modified by the bank or the credit union beyond populating the necessary letter of credit bond form fields.

(2) If the department determines that the bank or credit union has become unable to fulfill its obligations under the letter of credit, the department shall, in writing, notify the operator and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease mineral extraction and shall comply with the provisions of 82-4-341, MCA, and shall immediately begin to conduct reclamation operations in accordance with the Act, this subchapter and reclamation plan. Mining operations must not resume until the department has determined that an acceptable bond has been posted.

AUTH: 82-4-321, MCA

IMP: 82-4-338, 82-4-341, 82-4-360, MCA

REASON: The rule requires an amendment to modernize the terminology related to bank or credit union balance sheets and is updated to allow a letter of credit from a credit union. Additionally, the rule requires additional clarification so banks or credit unions are clear the form should not be modified.

17.24.150 ABANDONMENT OR COMPLETION OF OPERATION (1) For the purposes of administering the Act, the following conditions are considered evidence ~~the department will presume~~ that an a mining or milling operation is abandoned or completed, (and thus subject to the reclamation time schedule outlined in 82-4-336, MCA) as soon as:

- (a) ore ceases to be extracted for future use or processing;
- (b) milling or processing of ore ceases;
- (c) reprocessing of tailings or waste rock ceases;
- (d) the operating permit is suspended;
- (e) the operator has failed to maintain the legal right to access and conduct mining or milling activities in the permit area; or
- (f) the department's documentation through a site inspection, review of an operator's annual report, or information provided by an operator that the site is inactive.

~~Should the operator wish to rebut said assumption, the operator must provide evidence satisfactory to the department that the operations have not in fact been abandoned or completed.~~

(2) Documentation of any of the following situations will be adequate evidence of intent not to abandon operations. If the operating permit is not suspended, the department will use the following conditions to determine an operation is not abandoned or complete:

- (a) ore is removed or sold from existing on-site material stockpiles;
- (b) the operator is actively removing or regrading overburden;
- (c) the operator can demonstrate ongoing on-site activities related to mining, milling, or reclamation in compliance with the operating permit;
- (a) through (f) remain the same but are renumbered (d) through (i).

~~(3) At the discretion of the department, the following evidence and any other relevant evidence may be satisfactory to show intent to resume operations:~~

~~(a) exhibition of drill core and accompanying assay reports to show that ore minerals still remain in the mine and that they are present in veins or accumulations of sufficient size, grade and accessibility to warrant continued development. Geological, geochemical or geophysical indications of valuable mineralization sufficient to warrant further development or mining will also be considered by the department;~~

~~(b) continued employment of a maintenance crew to dewater the mine or replace timbers, etc.;~~

~~(c) data recording present and predicted commodity prices, labor and transportation costs, etc., or any other evidence which may show that mining may soon resume on a profitable basis. Board comment: It is recognized that "abandonment or completion of mining" under the operating permit (see 82-4-336, MCA) is an action commonly predicated upon complex and changing economic~~

circumstances; that cessation of mining need not mean abandonment or completion; and that short of obtaining an operator's records and examining the mine development drill core, the department may be unable to determine the operator's true intent.

(3) In order to comply with reclamation plan requirements, the department may extend the reclamation timeframe, as provided in 82-4-336, MCA. An operator may request authorization from the department to modify the reclamation timeframe through an amendment or revision. In addition to the information required by ARM 17.24.119 or 17.24.120, the request must also include:

(a) detailed information for why the extension is necessary to comply with reclamation plan requirements;

(b) a map and description to identify the inactive locations;

(c) plans and timeline to resume operations or complete final reclamation;

(d) contact information for site personnel, if different from the contact provided in the previous year's annual report; and

(e) for operations with water management or treatment requirements, a description of any monitoring and reporting, pumping, conveyance, treatment, or disposal activities that will be maintained during the period of inactivity to achieve water quality requirements.

AUTH: 82-4-321, MCA

IMP: 82-4-336, MCA

REASON: ARM 17.24.150 (mine sites) and ARM 17.24.170 (mill sites) have been combined and the language updated to better reflect complete and abandoned operations. Additionally, the procedure for extending reclamation timeframes has been further clarified pursuant to 82-4-341, MCA. The intent of amending the rule is to remove any economic considerations (other than requiring full bond) and communicate a clear expectation to operators regarding the definition of complete or abandoned under the Metal Mine Reclamation Act, 82-4-301, MCA *et seq.*

#### 17.24.159 BLASTING OPERATIONS: ORDERS OF THE DEPARTMENT

(1) remains the same.

(2) The department may require as many of the following requirements as are reasonably necessary for this purpose:

(a) through (e) remain the same.

(f)(i) The operator shall comply with the following to control airblast:

(i) Airblast must be controlled so that it does not exceed the values specified below at any dwelling, public building, school, church, or commercial, public, or institutional structure, unless the structure is owned by the operator and is not leased to any other person. If a building owned by the operator is leased to another person, the lessee may sign a waiver relieving the operator from meeting the airblast limitations of this section.

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Lower Frequency limit of  
measuring system, Hertz (Hz) (+3dB)

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Maximum level in  
decibels (dB)

0.1 Hz or lower - flat response .....	134 peak.
2 Hz or lower - flat response .....	133 peak.
6 Hz or lower - flat response .....	129 peak.
C-weighted, slow response .....	105 peak dBC.

If necessary to prevent damage based upon the consultant's report, the department shall specify lower maximum allowable airblast levels than those above.

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(ii) In all cases, except the C-weighted, slow-response system, the measuring systems used must have a flat frequency response of at least 200 Hz at the upper end. The C-weighted system must be measured with a Type 1 sound level meter that meets the standard American National Standards Institute (ANSI) S 4.4-1974 1.4-1983 specifications. These specifications are hereby incorporated by reference. Copies of this publication are on file with the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

(f)(iii) through (o)(i) remain the same.

AUTH: 82-4-321, MCA

IMP: 82-4-356, MCA

REASON: ARM 17.24.159 requires amending to incorporate a later edition of the American National Standards Institute (ANSI) reference—1971 to 1983.

17.24.166 MILLS: APPLICABILITY OF RULES TO MILLS (1) ARM 17.24.165 through 17.24.170 apply to all mills under permit pursuant to Title 82, chapter 4, part 3, MCA, on June 1, 1990, to all mills constructed or beginning operation after June 1, 1990, and to the expansion of any mill facility or complex concluded after June 1, 1990. In addition, ARM 17.24.165 through 17.24.170 apply to mills that were constructed and operated prior to June 1, 1990, and that use cyanide ore processing reagent after May 23, 1996. ARM 17.24.102 and 17.24.167 through 17.24.169 apply to:

(a) all mills under permit pursuant to Title 82, chapter 4, part 3, MCA, on June 1, 1990;

(b) all mills constructed or beginning operation after June 1, 1990;

(c) the expansion of any mill facility or complex concluded after June 1, 1990;

and

(d) all mills that were constructed and operated prior to June 1, 1990, and that use cyanide ore processing reagent after May 23, 1996.

(2) remains the same.

(3) Mills constructed as a part of a new mining operation must be permitted under the mine operating permit using the information required in ARM 17.24.167 through 17.24.170 17.24.169.

AUTH: 82-4-321, MCA

IMP: 82-4-304, MCA

REASON: ARM 17.24.166 requires amending to clarify the rule and ensure it is understandable. The substance of this rule is not intended to change. The deletion of the text in (1) allows for the department to separate the criteria into multiple subsections to improve readability.

17.24.171 REPROCESSING OF WASTE ROCK AND TAILINGS (1) The provisions of the Act and this subchapter apply to any person, ~~who is not a small miner,~~ who after May 31, 1990, ~~institutes a new operation to~~ reprocesses tailings or waste rock resulting from previous mining operations. An operating permit must be obtained before constructing facilities, removing tailings or waste rock, engaging in reprocessing operations, or disturbing land in anticipation of these activities.

~~(2) No land disturbed by a reprocessing operation before June 1, 1990, is subject to the Act and this subchapter unless reprocessing or related activities are conducted on the area after May 31, 1990, in which case the department shall require reclamation to the extent practicable and feasible.~~

(3) The reclamation of land disturbed after May 31, 1990, for the removal and reprocessing of waste rock and tailings from previous mining operations shall be conducted in the following manner:

(a) where waste rock and tailings have previously been reclaimed under the Act and this subchapter, reclamation following reprocessing shall be completed in compliance with the standards set forth in an operating permit;

(b) where waste rock and tailings have not previously been subject to the reclamation requirements of the Act and this subchapter, and are to be redisturbed under the proposed permit, the following reclamation requirements apply:

(i) reclamation of any reprocessed waste rock and tailings and associated facilities consistent with the standards of this definition;

(ii) salvage and replacement of available soil or suitable materials;

(iii) use of suitable materials at the surface of any reprocessed waste rock to the extent practicable;

(iv) grading of slopes to a stable angle, treating with appropriate soils amendments and vegetating with a perennial seed mix;

(v) amending and seeding the regraded site such that utility is improved over that which existed prior to reprocessing; and

(vi) preservation of water quality at least to the level that existed prior to reprocessing.

~~(2) A person who institutes a new reprocessing operation after May 31, 1990, who is not a small miner must obtain an operating permit before engaging reprocessing operations or disturbing land in anticipation of these operations.~~

~~(3) A person who wishes to continue a reprocessing operation that was conducted at any time during the 12 months immediately preceding the effective date of these rules must, in order to continue those operations no later than December 1, 1990, obtain an operating permit. Operations not conducted within the 12 months immediately preceding the effective date of this rule are considered new operations for the purposes of this rule.~~

AUTH: 82-4-321, MCA

IMP: 82-4-304, 82-4-335, MCA

REASON: The definition from ARM 17.24.165 for "Reclamation to the extent practicable and feasible" was incorporated into the rule. The definition was clarified by inserting text to identify the listed criteria that apply to the required reclamation method. The required reclamation criteria remain unchanged and are based upon whether the site was previously reclaimed pursuant to the requirements of the Metal Mine Reclamation Act, 82-4-301, MCA *et seq.* Additionally, the rule was clarified for readability by rewording the criteria for determining the applicability of the rule.

5. The department proposes to repeal the following rules:

17.24.165 MILLS AND REPROCESSING OPERATIONS: DEFINITIONS

AUTH: 82-4-321, MCA

IMP: 82-4-335, 82-4-336, 82-4-337, MCA

REASON: ARM 17.24.165 was incorporated into ARM 17.24.102 and ARM 17.24.171. This avoids having two definitions rules within the same regulatory scheme.

17.24.170 MILLS: CESSATION OR COMPLETION OF OPERATION

AUTH: 82-4-321, MCA

IMP: 82-4-341, MCA

REASON: The general requirements of ARM 17.24.170 were incorporated into ARM 17.24.150.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, at 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; telephone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-437rule@mt.gov, and must be received no later than 5:00 p.m., February 9, 2024.

7. Tommy Butler, representing attorney for the department, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail and mail on October 11, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendments and repeal of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Angela Colamaria  
ANGELA COLAMARIA  
Rule Reviewer

/s/ Christopher Dorrington  
CHRISTOPHER DORRINGTON  
Director  
Department of Environmental Quality

Certified to the Secretary of State January 2, 2024.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 17.50.1612, 17.50.1617,	)	AMENDMENT
17.50.1618, 17.55.109, 17.56.507,	)	
and 17.56.608 pertaining to	)	(STATE SUPERFUND,
incorporation by reference	)	PETROLEUM TANK CLEANUP,
	)	AND SOLID WASTE)
	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On May 20, 2024, the Department of Environmental Quality proposes to amend the above-stated rules.

2. The Department of Environmental Quality will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Environmental Quality no later than 5:00 p.m. on February 1, 2024, to advise us of the nature of the accommodation that you need. Please contact the Department of Environmental Quality at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-1388; fax (406) 444-4386; or e-mail DEQMAR17-438rule@mt.gov.

3. General Reason Statement: Through this rulemaking, the department is proposing to adopt and incorporate by reference the most recent edition of the federal Drinking Water Maximum Contaminant Levels (MCLs), the U.S. Environmental Protection Agency Regional Screening Levels (RSLs), the Reportable Quantities for Hazardous Substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Montana Risk-Based Corrective Action Guidance for Petroleum Releases. The department conducts periodic reviews of the Montana Risk-Based Corrective Action Guidance for Petroleum Releases to determine if changes to methods and toxicity information warrant updating the guidance. In addition to minor editorial changes, the following substantive updates were made in the December 2023 edition:

Readability and Usability of the Document: New tables were added to the document to walk the user through the Tier 2 risk-based screening level (RBSL) adjustment, and instructions were added to help the user determine the appropriate Tier 2 RBSL for each release.

A new Appendix D was added to provide an expanded discussion on the derivation of groundwater RBSLs and a discussion on actions needed based on exceedances of water quality standards or screening levels.



The order of compounds in the screening tables was rearranged to be consistent with the most common laboratory reports.

Revisions for Montana-specific Conditions: Residential and commercial worker RBSLs were recalculated to incorporate the Montana State Exposure Frequencies. These include factors specific to Montana's weather patterns, specifically frozen ground during the winter.

Increased Protection for Construction Workers and Other Users: Several construction worker RBSLs were recalculated using sub-chronic toxicity values rather than chronic toxicity values.

Clarification was added for evaluating construction worker exposure using soil sample data collected throughout the entire 0 - 10 foot interval.

All direct contact non-carcinogenic RBSLs were recalculated to incorporate a hazard quotient of 0.1 (instead of 0.125) to ensure protectiveness in the initial screening phase. This will allow up to 10 (instead of 8) non-carcinogenic compounds present in the initial screening.

Toxicity and Data Reference Updates: Comprehensive review was completed of all equation inputs for both direct contact (soil) and water RBSLs. Updates were made where needed based on updates to chemical specific toxicity values or data reference updates. Final RBSLs either increased or decreased based on the chemical and receptor.

A copy of the Montana Risk-Based Corrective Action Guidance for Petroleum Releases (December 2023) may be obtained by contacting Terri Mavencamp at (406) 444-5595. In addition, a copy of the document has been posted to the department's website at <https://deq.mt.gov/public/publiccomment>.

Reasons for the remainder of the proposed incorporation by references updates are discussed below.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

17.50.1612 ANALYTICAL METHODS (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) remains the same.

(b) Montana Risk-based Corrective Action Guidance for Petroleum Releases, ~~(May 2018)~~ (December 2023) as the analytical methodology landfarms must utilize and Table 1 of the Montana Risk-based Corrective Action Guidance for Petroleum Release as the standards for compliance with remediation requirements outlined in ARM 17.50.1617. A copy of the Montana Risk-based Corrective Action Guidance for Petroleum Releases, ~~(May 2018)~~ (December 2023) may be obtained at <http://deq.mt.gov/Land/lust> or by contacting MDEQ the Department of Environmental Quality at P.O. Box 200901, Helena, MT 59620-0901 or 1 (406) 444-5300.

(2) remains the same.

AUTH: 75-10-204, MCA  
IMP: 75-10-204, MCA

17.50.1617 LANDFARM FACILITY REMEDIATION STANDARDS

- (1) Contaminated soils are considered remediated when:
- (a) contaminant concentrations listed in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 (~~May 2018~~) (December 2023) are permanently reduced to the residential RSBL concentrations.
  - (2) and (3) remain the same.
  - (4) The owner or operator of a landfarm facility may not supply or use soils for any purpose exceeding the contaminant concentrations specified in Montana Risk-based Corrective Action Guidance for Petroleum Releases, Table 1 (~~May 2018~~) (December 2023).
  - (5) remains the same.

AUTH: 75-10-204, MCA  
IMP: 75-10-204, MCA;

17.50.1618 CLOSURE PLAN (1) For purposes of closure of a landfarm

facility, the owner or operator of a landfarm facility shall submit a closure plan that documents the following:

- (a) and (b) remain the same.
- (c) one of the following requirements was satisfied:
  - (i) and (ii) remain the same.
  - (iii) all contaminated soils were remediated to Table 1 residential RSBL concentrations in the Montana Risk-based Corrective Action Guidance for Petroleum Releases, (~~May 2018~~) (December 2023) and are capable of supporting native vegetation;
- (d) through (3) remain the same.

AUTH: 75-10-204, MCA  
IMP: 75-10-204, MCA

17.55.109 INCORPORATION BY REFERENCE (1) For the purposes of this

subchapter, the department adopts and incorporates by reference:

- (a) remains the same.
- (b) Drinking Water Maximum Contaminant Levels, published at 40 CFR 141.11, 40 CFR 141.61, 40 CFR 141.62, 40 CFR 141.63, 40 CFR 141.64, 40 CFR 141.65, and 40 CFR 141.66 (~~2010~~) (2023);
- (c) Montana Risk-based Corrective Action Guidance for Petroleum Releases (~~May 2018~~) (December 2023);
- (d) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Tables (~~November 2018~~) (November 2023), except when:
  - (i) through (5) remain the same.

AUTH: 75-10-702, 75-10-704, MCA

IMP: 75-10-702, 75-10-704, 75-10-711, MCA

REASON: In (1)(b), the department is proposing to adopt and incorporate by reference the most recent Drinking Water Maximum Contaminant Levels. The MCLs are the highest level of a contaminant allowed in drinking water and are considered in remediation. In (1)(d), the department is proposing to adopt and incorporate by reference the most recent edition of the Tables set forth in the U.S. Environmental Protection Agency, Regional Screening Levels (RSL) for Chemical Contaminants at Federal Superfund Sites (November 2023) to provide the most current screening levels to protect human health and the environment.

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

- (a) remains the same.
  - (b) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (~~May 2018~~) (December 2023);
  - (c) U.S. Environmental Protection Agency, Regional Screening Level (RSL) Tables (~~November 2018~~) (November 2023); and
  - (d) Reportable Quantities for Hazardous Substances under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) published at 40 CFR Part 302 (~~2009~~) (2023).
- (2) and (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

REASON: In (1)(c), the department is proposing to adopt and incorporate by reference the most recent edition of the Tables set forth in the U.S. Environmental Protection Agency, Regional Screening Levels (RSL) for Chemical Contaminants at Federal Superfund Sites (November 2023) to provide the most current screening levels to protect human health and the environment. RSLs provide a screening level calculation tool to assist risk assessors, remedial project managers, and others involved with risk assessment and decision-making at sites in developing or refining screening levels. In (1)(d) the department is proposing to adopt and incorporate by reference the most recent Reportable Quantities for Hazardous Substances under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act published at 40 CFR Part 302. Spills or overfills of a hazardous substance over its reportable quantity under 40 CFR Part 302 result in a release to the environment.

A copy of the U.S. Environmental Protection Agency, Regional Screening Level Tables (November 2023) may be obtained by contacting Terri Mavencamp at (406) 444-5595. In addition, a copy of the document is available at <https://www.epa.gov/risk/regional-screening-levels-rsls-generic-tables>.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

- (a) remains the same.

(b) Drinking Water Maximum Contaminant Levels, published at 40 CFR Part 141.40 CFR 141.11, 40 CFR 141.61, 40 CFR 141.62, 40 CFR 141.63, 40 CFR 141.64, 40 CFR 141.65, and 40 CFR 141.66 (2009) (2023);

(c) Montana Risk-Based Corrective Action Guidance for Petroleum Releases (RBCA) (May 2018) (December 2023); and

(d) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA

IMP: 75-11-309, 75-11-505, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620; telephone (406) 444-1388; fax (406) 444-4386; or e-mail [DEQMAR17-438rule@mt.gov](mailto:DEQMAR17-438rule@mt.gov), and must be received no later than 5:00 p.m., February 9, 2024.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the department at the above address no later than 5:00 p.m., February 9, 2024.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 227 persons based on the combination of: the number of regulated petroleum facilities in Montana (1,199), the number of petroleum release sites currently undergoing remediation (896), the number of state superfund facilities (175), and the number of permitted landfarms (3) where one or more of the updated references would be applicable. It is possible other entities may be directly affected by the proposed action (e.g., sites with contamination not yet identified, etc.), but it would be difficult to definitively identify them so the department has conservatively used its lists of identified/regulated sites where these screening levels are applicable.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Whitaker

NICHOLAS WHITAKER

Rule Reviewer

/s/ Christopher Dorrington

CHRISTOPHER DORRINGTON

Director

Department of Environmental Quality

Certified to the Secretary of State January 2, 2024.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 23.16.117, 23.16.403,	)	AMENDMENT
23.16.509, 23.16.1802, 23.16.1811,	)	
23.16.1823, 23.16.1826, 23.16.1827,	)	NO PUBLIC HEARING
23.16.1907A, and 23.16.1924	)	CONTEMPLATED
pertaining to gambling licenses and	)	
video gambling machines	)	

TO: All Concerned Persons

1. On February 12, 2024, the Department of Justice proposes to amend the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on January 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Jason Johnson, Gambling Control Administrator, Department of Justice, 615 South 27th Street, Suite A, Billings, Montana, 59101; (406) 896-4300; or e-mail [jason.johnson@mt.gov](mailto:jason.johnson@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) through (5) remain the same.

(6) A certificate, stock, or other evidence of ownership may ~~not~~ be registered ~~in~~ obtained for the licensee's records but not executed until the date the gambling license has been issued by the department.

(7) through (9)(a)(ii) remain the same.

(iii) personal history statement (Form 10), as that form is described in ARM 23.16.102(3)(b), for the person designated to act in the capacity of a receiver, trustee, or attorney in fact;

(iv) through (10) remain the same.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, MCA

REASON: These documents are required at closing, but the licensee needs to be able to obtain them prior to approval. This new wording also makes clear that ownership transfer execution is not allowed prior to department approval. The rule earmark was removed per the Secretary of State's rulemaking guidelines.

23.16.403 PROCESSING OF CARD DEALER LICENSE APPLICATION RENEWAL, OR REPLACEMENT (1) remains the same.

(2) A card dealer license will expire if the department does not receive the application and supporting documents to renew the license by the expiration date.

(3) and (4) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-308, MCA

REASON: When this rule was created, there was a typographical error where the word "license" was omitted from the sentence. This change corrects that omission.

23.16.509 TEMPORARY GAMBLING AUTHORITY (1) The department may grant an applicant for a gambling operator license the temporary authority to operate gambling when:

(a) and (b) remain the same.

(c) ~~within the 12-month period prior to submission of the application,~~ the premises to be licensed had been licensed and operated as a gambling establishment, or licensed for the on-premises consumption of alcoholic beverages, and the premises were not altered from the last approved floor plan;

(d) through (3) remain the same.

(4) Temporary gambling authority terminates whenever:

(a) the department, pursuant to ARM 23.16.203(4), has notified the applicant of the department's intent to deny the operator license; or

(b) and (5) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-176, MCA

REASON: This change will help align the gambling rules with the alcohol rules and the requirements for temporary authority. The Department of Revenue removed the reference to "12-months" from its rules; therefore, the Department of Justice is removing that reference as well. The rule earmark was removed per the Secretary of State's rulemaking guidelines.

23.16.1802 DEFINITIONS (1) through (7) remain the same.

(8) "Entertainment display" means a separate visual display to represent the outcome of a video line game and must be displayed as a video line game. This display should be considered for entertainment purposes only as the game outcome must be solely derived from the corresponding video line game.

(8) through (31) remain the same, but are renumbered (9) through (32).

AUTH: 23-5-115, 23-5-602, 23-5-621, MCA

IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-610, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

REASON: This definition is necessary to define entertainment displays.

23.16.1811 IDENTIFICATION DECAL REQUIRED ON ALL VIDEO GAMBLING MACHINES (1) Upon request from a licensed video gambling machine manufacturer ~~or its designated representative, distributor, route operator, or operator of a gambling establishment~~, the department will issue identification decals to be placed upon ~~new~~ approved video gambling machines prior to their distribution or sale.

(2) through (5) remain the same.

AUTH: 23-5-621, MCA

IMP: 23-5-621, 23-5-637, MCA

REASON: The Gambling Control Division is updating the rule to allow any licensed entity, including a distributor, route operator, manufacturer, or operator of a gambling establishment, to submit identification decal requests. "Approved" ensures the video gambling machine being permitted is compliant with state laws and rules prior to being made available for play. The division believes this process would not constitute a transfer of approval (which is disallowed in ARM 23.16.1901).

23.16.1823 VIDEO GAMBLING PERMITS – ELIGIBILITY, APPLICATION, RENEWAL, PRORATION (1) and (2) remain the same.

(3) An eligible gambling operator or machine owner must submit a completed video gambling machine permit application (Form 8) for each machine to be permitted. The application to permit a video gambling machine may also be submitted electronically and paid with an electronic check or credit card on a state-sponsored internet site. An application is not complete unless:

(a) through (8) remain the same.

(9) The department shall authorize reduced permitting fees if the location is licensed during the first quarter of the fiscal year and the video gambling machines have already been permitted at the current location by the selling entity. The reduced fee is set at \$25 per video gambling machine per 23-5-612, MCA.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-213, 23-5-602, 23-5-611, 23-5-612, 23-5-621, 23-5-629, MCA

REASON: The existing rule only references paper applications and does not account for online submissions. Section (3) is reworded, and (9) is added. Section (9) allows for a discount because these video gambling machines were already permitted in the new fiscal year. The permit fee referenced in (9) has been in effect since 2013 due to a statutory amendment to 23-5-612, MCA, that year. The fee is now being added to the rule so that the rule reflects all permitting fee requirements. There is no new fiscal impact because the statutory fee has been in effect for ten years. Therefore, the requirements of 2-4-302(1)(c), MCA, do not apply.

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) End of quarter and service mechanical and electronic meter readings are used for tax calculation purposes and must be taken at the same time. Mechanical meters must



be reported exactly as displayed on the machine and not from an audit ticket.

Machine owner quarterly reporting requirements are as follows:

~~(a) For each machine not utilizing an approved automated accounting and reporting system, the machine owner or his designated representative must file with the department a quarterly tax report signed by the machine owner or his designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by the act. The report will be used by the department to verify payment of all taxes and the winning percentage of the machine as required by the act. The following requirements apply:~~

~~(i) The report must be delivered to the Gambling Control Division, 615 South 27th Street, Suite A, Billings, Montana 59101, or bear a United States postal service postmark not later than midnight of the 15th of the month following the quarters ending March 31, June 30, September 30, and December 31.~~

~~(ii) The mechanical and electronic meter readings must be taken at the same time and recorded for the report within seven days of the close of the operator's last day of business in the reporting quarter. The readings must be supported by the original printed accounting ticket.~~

~~(iii) The report is due on each machine after it has been permitted.~~

~~(b)~~(a) For each machine utilizing an approved automated accounting and reporting system, the machine owner or a designated representative shall transmit files to the department, in a format prescribed by the department, with the following information:

~~(i) for tier I systems, all electronic meter readings and all events set out in ARM 23.16.2105 for each day the machine is in operation, and the last set of meter readings received before the end of the quarter (meter readings received no more than seven days before the end of the quarter) will be used as quarter end readings for purpose of calculating a tax advisory to be sent to machine owners;~~

~~(ii) for tier II systems;~~

~~(A)~~ all electronic meter readings for each week or two-week period for which the machine is approved to report;

~~(B)~~ and within electronic and mechanical meter readings up to 14 days prior to the end of the quarter but not later than seven days after the last day of each quarter, all electronic and mechanical meter readings, along with an indication that it is the last reading to be reported in the quarter may be designated as the quarter end meter readings; and

~~(iii)(C) for tier II systems, before- and after-service electronic and mechanical meter readings must be submitted in a format prescribed by the department, if meters are reset or malfunction.~~

~~(c)~~(b) For machines utilizing an approved automated accounting and reporting system, after the final set of meter readings for the quarter is received, the department will electronically transmit a machine income and tax advisory estimate by machine and location to the machine owner. Upon receipt of the machine income and tax advisory, the owner must contact the department within seven days in order to dispute the machine income and tax advisory estimate.

~~(d)~~(c) The machine owner will have until midnight of the 15th day of the month following the quarters ending March 31, June 30, September 30, and

December 31 to confirm and pay any tax due by electronic check or credit/debit card using a state-sponsored internet site.

(d) For each machine permitted during a reporting quarter not utilizing an approved automated accounting and reporting system, the machine owner or a designated representative must file with the department a quarterly tax report signed by the machine owner or a designated representative. The forms prescribed and supplied by the department require readings from the mechanical and electronic meters as required by the act. The report will be used by the department to verify payment of all taxes for the machine as required by the act. The following requirements apply:

(i) Forms 6 and 6a make up quarterly video gambling machine tax report. Forms 6 and 6a are incorporated by reference and are available from any Gambling Control Division office location or on the department's web site, [www.dojmt.gov/gaming](http://www.dojmt.gov/gaming).

(ii) The report must be delivered to Gambling Control Division, 615 South 27th Street, Suite A, Billings, Montana 59101, or bear a United States postal service postmark not later than midnight of the 15th of the month following the quarters ending March 31, June 30, September 30, and December 31.

(iii) The mechanical and electronic meter readings must be recorded for the report within seven days of the close of the operator's last day of business in the reporting quarter. The readings must be supported by the original printed accounting ticket.

(2) remains the same.

~~(3) Form 6 is a quarterly video gambling machine tax report; Form 6 is incorporated by reference and is available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424, or on the department's web site [www.dojmt.gov/gaming](http://www.dojmt.gov/gaming).~~

~~(4)~~(3) For the purposes of this rule the term theft includes the physical break-in or entry into the video gambling machine, or manipulation of the machine by external means, resulting in the accumulation of credits available for redemption without the insertion of money. If the gross income reported for a machine has been reduced to reflect a loss resulting from a theft from the machine, the machine owner or his a designated representative shall submit the following information together with the quarterly report:

(a) through (d) remain the same.

~~(5)~~(4) If the machine owner or his a designated representative fails to file the quarterly tax report or remit the required gross machine income tax when due, the following penalties will be assessed:

(a) through (d) remain the same.

(6) remains the same, but is renumbered (5).

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-136, 23-5-610, 23-5-621, 23-5-637, MCA

REASON: The changes made to ARM 23.16.1826 update the rule to organize the three methods of reporting video gambling machine meters and the current reporting technology for video gambling machines.

23.16.1827 RECORD KEEPING REQUIREMENTS (1) Machine operation records must be maintained and made available for inspection by the department upon request. The records must be maintained by the machine owner. The records must provide all necessary information the department may require to ensure operation of machines in compliance with the law. Mechanical meters must be recorded exactly as displayed on the machine and not from an audit ticket.

(2) remains the same.

(3) Machine owners using tier I accounting and reporting systems must maintain the following records:

(a) ~~a correct lifetime audit ticket as provided for by department rules, which must include progressive accounting data if applicable. The lifetime audit ticket must be printed for each machine at least once every 7 days; and~~

(b) the exact copy of all printed ticket vouchers and audit tickets, i.e., the duplicate audit tape(s) created at the time each audit or payout ticket is printed.

(4) through (6) remain the same.

(7) For any violation of the record keeping requirements found in this rule, the department may:

(a) act by means of temporary cease and desist orders under 23-5-136(1)(a), MCA; or

(b) impose civil penalties under 23-5-136(1)(b), MCA.

AUTH: 23-5-115, 23-5-621, 23-5-637, MCA

IMP: 23-5-115, 23-5-136, 23-5-610, 23-5-621, 23-5-628, 23-5-637, MCA

REASON: Since mechanical meters cannot be manipulated, these are the meter readings that should be used for record keeping purposes. The meter reading should not be obtained from an audit ticket. The change to (3)(a) removes outdated language regarding the printing of audit tickets every seven days. Most video gaming machines use automated systems. This change aligns with how businesses operate in today's market. The statutory earmarks were removed per the Secretary of State's rulemaking guidelines.

23.16.1907A SOFTWARE SPECIFICATIONS FOR VIDEO LINE GAMES

(1) Each video line game title must meet the following specifications for approval for use within the state of Montana. To be approved, the game must:

(a) using a random number generator, draw and display ~~a minimum of three numbers or symbols in a line; on at least three reels.~~ Video line game outcomes cannot be determined by the results of past horse races;

(b) through (f) remain the same.

(2) If an entertainment display is used, the conforming line game must:

(a) always be clearly displayed to the player;

(b) be a minimum of three inches by three inches in size;

(c) be clearly labeled as the conforming game; and

(d) appear on the same screen as the entertainment display.

(3) The entertainment display must:

(a) meet the requirements in (1)(b) through (e);

- (b) be clearly labeled as the entertainment display; and
- (c) not intentionally mislead a player.
- (2) remains the same, but is renumbered (4).

AUTH: 23-5-115, 23-5-602, 23-6-603, 23-5-621, MCA

IMP: 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-611, 23-5-621, MCA

REASON: The language added in (1)(a) further prohibits other video line game variations like historical horse racing. Sections (2) and (3) were added to clarify the use of entertainment displays.

23.16.1924 PROHIBITED MACHINES (1) Any machine which, in substance, simulates the game of video poker, keno, bingo, or video line games, without conforming to the requirements of the act or these rules and is placed in service for play by the public is prohibited. Entertainment displays are allowed as provided in ARM 23.16.1907A.

- (2) remains the same.

AUTH: 23-5-115, 23-5-602, 23-5-605, MCA

IMP: 23-5-152, 23-5-602, 23-5-603, 23-5-605, 23-5-606, 23-5-607, 23-5-608, 23-5-609, 23-5-611, 23-5-613, MCA

REASON: Section 23-5-621, MCA requires the Gambling Control Division to provide specifications for video line video gambling machines including a description of the images and minimum area of a screen that depicts a video line game. There are manufacturers that would like to offer consumers video gambling machines that use entertainment displays. Therefore, clarity needs to be given to what is allowed. The proposed language was created to allow entertainment displays but keeps consumer protections in mind.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Jason Johnson, Gambling Control Administrator, Department of Justice, 615 South 27th Street, Suite A, Billings, Montana, 59101; (406) 896-4300; or e-mail [jason.johnson@mt.gov](mailto:jason.johnson@mt.gov), and must be received no later than 5:00 p.m., February 9, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Jason Johnson at the above address no later than 5:00 p.m., February 9, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 130 licensed gambling operators (persons) based on fiscal year 2024 first quarter reporting which indicates there are currently 1,296 active gambling operators in Montana.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sosmt.gov/ARM/Register>.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ DAVID ORTLEY

David Ortley  
Deputy Attorney General  
Rule Reviewer

/s/ AUSTIN KNUDSEN

Austin Knudsen  
Attorney General  
Department of Justice

Certified to the Secretary of State January 2, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.50.501, 37.50.502,	)	PROPOSED AMENDMENT AND
37.50.505, 37.50.510, and 37.50.511	)	REPEAL
and the repeal of ARM 37.50.506	)	
pertaining to foster care support	)	
services	)	

TO: All Concerned Persons

1. On February 2, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/85199624992?pwd=SWp2UkRVTG9DZGI2Mmd0b2tFTDBXQT09>, meeting ID: 851 9962 4992, and password: 584274; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 851 9962 4992, and password: 584274. Find your local number: <https://mt-gov.zoom.us/u/kgpBclNlm>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 19, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhás, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.50.501 FOSTER CARE SUPPORT SERVICES, PURPOSE (1) The purpose of this subchapter is to establish eligibility criteria for foster care support services. Payment for foster care support services may be made on behalf of foster children who require diapers, ~~clothing,~~ respite care, ~~transportation (other than medically-related transportation)~~ and other specific special services which are not available from other sources.

AUTH: 41-3-1103, 53-2-201, 53-4-111, MCA  
IMP: 41-3-1103, 53-4-111, MCA

37.50.502 FOSTER CARE SUPPORT SERVICES, DEFINITIONS For the purposes of this rule subchapter, the following definitions apply:

- (1) remains the same.
- (2) "Foster care support services" means a diaper allowance, ~~clothing allowance~~, respite care allowance, or other special need allowance paid on behalf of a foster child who has a documented need for such foster care support services.
- (3) remains the same.
- (4) ~~"Clothing allowance" means payments made on behalf of a foster child for clothing subject to the conditions and limitations set forth in ARM 37.50.506.~~
- (5) and (6) remain the same but are renumbered (4) and (5).

AUTH: 41-3-1103, 53-2-201, 53-4-111, MCA

IMP: 41-3-1103, 53-4-111, MCA

37.50.505 FOSTER CARE SUPPORT SERVICES, DIAPER ALLOWANCE

- (1) remains the same.
- (2) The amount of the diaper allowance is \$40 1.67 per month day per eligible child.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, MCA

IMP: 41-3-1103, 41-3-1142, 52-2-111, MCA

37.50.510 FOSTER CARE SUPPORT SERVICES, SUPPLEMENTAL SERVICES ALLOWANCE (1) and (2) remain the same.

- ~~(3) A supplemental services allowance for transportation costs will be authorized only for foster children who must travel to secure necessary special educational or training services.~~
- ~~(a) To be eligible for reimbursement for transportation costs, the following requirements must be met:~~
  - ~~(i) travel one-way must be 10 or more miles;~~
  - ~~(ii) transportation is necessary to obtain services not reasonably available in closer proximity to foster parents'; residence; and~~
  - ~~(iii) transportation is approved in advance by the department.~~
- ~~(4) Supplemental services allowances shall be limited to the lesser of:~~
  - ~~(a) actual costs; or~~
  - ~~(b) \$87.50 per month per child.~~

AUTH: 41-3-1103, 53-2-201, 53-4-111, MCA

IMP: 41-3-1103, 53-4-111, MCA

37.50.511 FOSTER CARE SUPPORT SERVICES, RESPITE CARE ALLOWANCE (1) remains the same.

- (2) The amount of the respite care payment(s) shall not exceed:
  - (a) \$4 20.16 per hour per child for up to 8 continuous hours;
  - (b) ~~\$32~~ 161.28 per child for more than 8 hours and up to 24 hours.
- (3) remains the same.

AUTH: 41-3-1103, 53-2-201, 53-4-111, MCA  
IMP: 41-3-1103, 53-4-111, MCA

4. The department proposes to repeal the following rule:

37.50.506 FOSTER CARE SUPPORT SERVICES, CLOTHING ALLOWANCE

AUTH: 41-3-1103, 53-2-201, 53-4-111, MCA  
IMP: 41-3-1103, 53-4-111, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services, Child and Family Services (department) is proposing to amend ARM 37.50.501, 37.50.502, 37.50.505, 37.50.510 and 37.50.511 and to repeal ARM 37.50.506.

The following summary explains the reasonable necessity for the proposed rule amendments.

The department proposes to amend ARM 37.50.501, 37.50.502, 37.50.505, 37.50.510 and 37.50.511 as a result of budget changes within the Child and Family Services Division. The rates paid to foster care providers, which were incorporated in House Bill 2 that was passed in the 2023 legislative session, increased rates for diaper and respite allowances. The budget changes also combined clothing and transportation allowances into the overall foster care rate. These amendments reflect those changes.

The department proposes to repeal ARM 37.50.506. It is necessary to repeal this rule because clothing allowance is no longer a separate service that is provided or available to providers, but is now part of the current foster care rate paid to every provider.

The department's authorizing statutes are 52-2-603(1)(b) and (3), MCA, which state that the department shall exercise licensing authority over all youth foster homes, kinship foster homes, and shall pay for room, board, clothing, personal needs, and transportation in youth foster care homes.

Fiscal Impact

The proposed rule amendments have no anticipated fiscal impact implications.

The department intends to apply these proposed rule amendments retroactively to July 1, 2023. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.



6. The department intends to apply these proposed rule amendments and repeal retroactively to July 1, 2023.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., February 9, 2024.

8. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 7.

10. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Paula M. Stannard

Paula M. Stannard  
Rule Reviewer

/s/ Charles T. Brereton

Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State January 2, 2024.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to the Autism Grant ) PROPOSED ADOPTION  
Program )

TO: All Concerned Persons

1. On February 1, 2024, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81919672965?pwd=VkJSVytxcFVrcThXbk1YRkRUZz09>, meeting ID: 819 1967 2965, and password: 556007; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 819 1967 2965, and password: 556007. Find your local number: <https://mt-gov.zoom.us/u/kclJ7Lk6L>.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on January 18, 2024, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhass, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

3. The rule as proposed to be adopted provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE  
SUBMISSION AND REVIEW OF APPLICATIONS FOR THE AUTISM FACILITIES

GRANT (1) The Department of Public Health and Human Services adopts and incorporates by reference the Autism Facilities Grant Manual for the 2025 Biennium.

(2) The manual incorporated by reference in (1) contains the following:

- (a) eligible applicants and projects;
- (b) general requirements for applying for the Autism Facilities Grant;
- (c) application review process; and
- (d) administrative procedures and requirements.

(3) Copies of the manual adopted by reference in (1) may be obtained from the Department of Public Health and Human Services, Developmental Disabilities Program, or on the web site at <https://dphhs.mt.gov/BHDD/DisabilityServices/developmentaldisabilities/>.

AUTH: 53-20-173, MCA

IMP: 53-20-173, 53-20-174, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt a rule, effective March 9, 2024, for the administration of House Bill (HB) 952, pertaining to the Autism Facilities Grant Program.

NEW RULE I adopts and incorporates into rule an Autism Facilities Grant Program manual drafted by the Developmental Disabilities Program (DDP) which includes instructions on the application process, timeframe for construction/renovation, and other eligibility criteria for the grant.

This rule is necessary because the Developmental Disabilities Program does not have any rules for the administration of this grant.

#### Fiscal Impact

House Bill 952 appropriates a one-time allotment of \$400,000 for the biennium beginning July 1, 2023.

5. The department intends for the effective date of this rule to be March 9, 2024.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., February 9, 2024.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by Zoom on August 15, 2023.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Paula M. Stannard  
Paula M. Stannard  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State January 2, 2024.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 42.21.165 pertaining to	)	AMENDMENT
Livestock Reporting Deadline	)	
Revisions to Implement House Bill 66	)	NO PUBLIC HEARING
(2023)	)	CONTEMPLATED

TO: All Concerned Persons

1. The Department of Revenue proposes to amend the above-stated rule.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later 5:00p.m. on January 19, 2024, to advise us of the nature of the accommodation you need. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.21.165 LIVESTOCK REPORTING AND PER CAPITA FEE PAYMENT

(1) and (2) remain the same.

(3) Livestock owners that bring livestock into the state after February 1 of the current year are required to complete and submit a livestock reporting form to the department. ~~The department will use the information provided by the livestock owner to mail them a reporting form in~~ by March 1 of the following year.

(4) remains the same.

(5) Per capita livestock fee payments are due to the department by ~~May 31~~ March 1 of the reporting year. Livestock owners may be entitled to a per capita fee refund from the Montana Department of Livestock (DOL), under the provisions of 15-24-922, MCA, for livestock located out of the state during the reported tax year.

(6) The department provides ~~DOL has access to the department's~~ with livestock reporting and billing/payment data for compliance purposes. If ~~the~~ DOL determines that a livestock owner has not been reporting their livestock counts to the department as required, ~~the~~ DOL may provide the department with estimated livestock type and counts and the department will use this information to bill the livestock owner for the per capita livestock fees.

AUTH: 15-1-201, MCA

IMP: 15-24-903, 15-24-905, 15-24-921, 15-24-922, 15-24-925, 87-4-406,  
MCA

REASONABLE NECESSITY: The 68th Montana Legislature enacted House Bill 66 (HB 66). HB 66 amended 15-24-905 and 15-24-921, MCA, which revised the livestock per capita fee payment due date, provides a grace period for reporting livestock brought into the state, and made the livestock per capita fee payment due date the same as the reporting due date. Based on these enactments, it is necessary for the department to amend ARM 42.21.165(3), (5), and (6) to align the rule with the amended statutes. The department also proposes to amend references to the Department of Livestock (DOL) in (6) to remove the word "the," which is consistent in style with other department rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., February 12, 2024.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [todd.olson@mt.gov](mailto:todd.olson@mt.gov) and must be received no later than 5:00 p.m., February 12, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The department estimates the number of those directly affected by this rule action to be 15,000 persons based on the number of returns filed for 2023. The number of hearing requests necessary for the department to conduct a public hearing shall be 25, which is less than ten percent of the number of persons affected.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, email, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a different mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this notice is available through the Secretary of State's web site at [sosmt.gov/arm/register/](http://sosmt.gov/arm/register/).

9. The bill sponsor contact requirements of 2-4-302, MCA, have been fulfilled. The primary bill sponsor was contacted by email on December 28, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson

Todd Olson  
Rule Reviewer

/s/ Brendan Beatty

Brendan Beatty  
Director of Revenue

Certified to the Secretary of State January 2, 2024.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 2.43.2602 pertaining to the        )  
application process for disability        )  
benefits        )

TO: All Concerned Persons

1. On October 20, 2023, the Public Employees' Retirement Board published MAR Notice No. 2-43-641 pertaining to the proposed amendment of the above-stated rule at page 1201 of the 2023 Montana Administrative Register, Issue Number 20. On November 3, 2023, the board published an amended notice of proposed amendment of the above-stated rule at page 1428 of the 2023 Montana Administrative Register, Issue Number 21.

2. The Public Employees' Retirement Board has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Nicholas Domitrovich  
Nicholas Domitrovich  
Chief Legal Counsel  
Rule Reviewer

/s/ Maggie Peterson  
Maggie Peterson  
President  
Public Employees' Retirement Board

Certified to the Secretary of State January 2, 2024.



BEFORE THE FISH AND WILDLIFE COMMISSION, THE STATE PARKS AND  
RECREATION BOARD, AND THE DEPARTMENT OF FISH, WILDLIFE AND  
PARKS OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through XXIV and the repeal	)	PROPOSED ADOPTION AND
of ARM 12.8.201, 12.8.202, 12.8.203,	)	REPEAL
12.8.204, 12.8.205, 12.8.206,	)	
12.8.207, 12.8.208, 12.8.209,	)	
12.8.210, 12.8.212, 12.8.213,	)	
12.8.217, 12.8.218, 12.8.219,	)	
12.8.801, 12.8.802, 12.8.803,	)	
12.8.804, 12.8.805, 12.8.806,	)	
12.8.807, 12.8.808, 12.8.809,	)	
12.8.810, 12.8.811, 12.8.812,	)	
12.8.813, 12.8.814, 12.8.815,	)	
12.8.816, 12.8.817, 12.8.818,	)	
12.8.819, 12.8.820, 12.8.821,	)	
12.8.822, 12.8.823, and 12.8.824	)	
pertaining to the public use rules of	)	
Fish, Wildlife and Parks public lands	)	

TO: All Concerned Persons

1. On September 8, 2023, the Department of Fish, Wildlife and Parks (FWP), the State Parks and Recreation Board (board), and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-603 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 952 of the 2023 Montana Administrative Register, Issue Number 17.

2. On October 2, 2023, a public hearing was held on the proposed adoption and repeal of the above-stated rules via Zoom. The department, commission, and board received both written and oral testimony comments by October 10, 2023.

3. The purpose of the proposed consolidated rules is to provide for consistent management of public uses across all lands while maintaining the purpose of different site types, protecting fish, wildlife, habitat, cultural, and recreational resources, as well as improving customer service and understanding of expectation for public use. The department, commission, and board will continue to use seasonal (biennial or annual) rules to address site-specific and date-specific rulemaking needs such as exceptions to seasonal closures on wildlife management areas.

4. FWP has repealed ARM 12.8.201, 12.8.202, 12.8.203, 12.8.204, 12.8.205, 12.8.206, 12.8.207, 12.8.208, 12.8.209, 12.8.210, 12.8.212, 12.8.213, 12.8.217, 12.8.218, 12.8.219, 12.8.801, 12.8.802, 12.8.803, 12.8.804, 12.8.805, 12.8.806, 12.8.807, 12.8.808, 12.8.809, 12.8.810, 12.8.811, 12.8.812, 12.8.813, 12.8.814,

12.8.815, 12.8.816, 12.8.817, 12.8.818, 12.8.819, 12.8.820, 12.8.821, 12.8.822, 12.8.823, and 12.8.824 as proposed.

5. FWP has adopted the following rules exactly as proposed: NEW RULES I (12.12.101), II (12.12.102), IX (12.12.109), XI (12.12.111), XV (12.12.115), XVI (12.12.116), XVII (12.12.117), and XXI (12.12.121).

6. FWP has adopted the following rules with the following changes from the proposal notice, based on the comments received and after further review, new matter underlined, deleted matter interlined:

NEW RULE III (ARM 12.12.103) RULES POSTED BY THE DEPARTMENT

(1) remains as proposed.

(2) While in a public use site, a person is required ~~it is prohibited to fail~~ to comply with the rules set out in this chapter, or site-specific rules posted by the department.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE IV (ARM 12.12.104) PROHIBITED CONDUCT (1) through

(1)(d) remain as proposed.

(e) operating sound-emitting electronic devices, such as speakers, radios, televisions, or other equipment at a volume which projects sound ~~beyond the person's immediate vicinity~~ in a manner that disturbs others; or

(f) and (2) remain as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE V (ARM 12.12.105) FEE COMPLIANCE AND CLOSURE (1)

and (2) remain as proposed.

(3) While in a public use site ~~it is prohibited to:~~ payment is required for day use, camping, group use, or any other required fee.

~~(a) fail to pay any required day use, camping, group use, or any other required fee; or~~

~~(b) enter or remain in a public use site when closed.~~

(4) When a public use site is closed, a person may not enter or remain in the site.

(4) through (6) remain as proposed and are renumbered (5) through (7).

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VI (ARM 12.12.106) PROPERTY DISTURBANCE (1) While in

a public use site it is prohibited to:

- (a) damage, ~~deface~~, destroy, or possess any natural features, developed features, or vegetation;
- (b) damage, ~~deface~~, destroy, possess, or permit the disturbance or removal of topsoil or subsoil, nonfossilized and fossilized paleontological specimens, cultural or archeological resources, or the parts thereof;
- (c) remains as proposed.
- (d) design, develop, construct, place, or occupy any ~~structure, such as development or placement of~~ unauthorized structure, roads, trails, signs, and or landscape features;
- (e) through (2) remain as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VII (ARM 12.12.107) DESIGNATED AND DISPERSED CAMPING SITES (1) through (1)(d) remain as proposed.

- (e) exceed the designated occupancy limit of a campsite; or
- ~~(f) fail to comply with the terms of a special use permit;~~
- ~~(g) fail to vacate campsite by posted check out time; or~~
- ~~(h) (f)~~ travel more than 50 yards with a motorized vehicle from a designated road in areas designated for dispersed camping.

(2) Unless otherwise posted by the department, within a public use site, it is required to:

- (a) comply with the terms of a special use permit; and
- (b) vacate a campsite by the posted check-out time.

(2) through (5) remain as proposed but are renumbered (3) through (6).

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE VIII (ARM 12.12.108) FIRES AND FIREWORKS (1) Unless otherwise posted by the department in a public use site a person may not ~~it is prohibited to:~~

- (a) through (c) remain as proposed.
- (d) light or maintain a fire or burning materials, that causes damage or threatens to cause damage to property or public use ~~recreation~~ site resources, creates litter, or otherwise creates a public safety hazard;
- (e) through (g) remain as proposed.
- (2) Smoking in a public use site is allowed in outdoor areas unless prohibitions are posted by the department.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE X (ARM 12.12.110) SANITATION AND WASTE DISPOSAL

(1) Unless otherwise posted by the department in a public use site, ~~it is prohibited to~~ a person may not:

(a) through (g) remain as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XII (ARM 12.12.112) LIVESTOCK (1) remains as proposed.

(2) ~~Unless otherwise posted by the department, the following are prohibited in public use sites: and except where specifically permitted or authorized by a lease, license, or other written agreement with the department, a person may not range, graze, water, or allow cattle or other livestock in public use sites.~~

~~(a) failure to clean up animal feces, feed, or bedding materials in a developed area; or~~

~~(b) to range, graze, water, or allow cattle or other livestock in public use sites except where specifically permitted or authorized by a lease, license, or other written agreement with the department.~~

(3) A person is required to clean up animal feces, feed, or bedding materials in the developed area of a public use site.

(3) and (4) remain as proposed but are renumbered (4) and (5).

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XIII (ARM 12.12.113) WEAPONS (1) ~~Except as posted by the department, discharge of any weapon as defined in 45-2-101, MCA, such as firearms, explosives, air or gas weapons, paintball guns, arrows from a bow, spears or spear guns on or over either land or water is prohibited in public use sites.~~

(2) The possession, display, carrying, discharge, or use of a weapon firearm in public use sites must be in compliance with Titles 23, 45, and 87, MCA. Title 45, chapter 8, part 3, MCA.

(2) Public use sites, or portions thereof, may be closed to the discharge of weapons as defined in 45-2-101, MCA, when the director determines there is an undue hazard to human safety, or to protect property and public resources. The closure does not apply to lawful discharges in cases of self-defense.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XIV (ARM 12.12.114) HUNTING AND TRAPPING (1) When open to public use, wildlife management areas and fishing access sites are open to all commission-established hunting and trapping seasons unless otherwise prohibited and posted. ~~Written authorization by the department is required prior to trapping on a wildlife management area or fishing access site.~~ The commission authorizes the department to issue specific restrictions on hunting and trapping at a wildlife management area or fishing access site.

(2) State parks are open to all commission-established hunting seasons unless prohibited by the board. The board authorizes the department to issue

specific restrictions on hunting at a state park where hunting is allowed. ~~Trapping is prohibited in state parks.~~

(3) and (4) remain as proposed.

(5) Trapping is prohibited in state parks unless authorized by the board. The board authorizes the department to issue specific restrictions on trapping at a state park where trapping is allowed.

(6) Written authorization by the department is required prior to trapping on department lands.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XVIII (ARM 12.12.118) ABANDONED PROPERTY (1) remains as proposed.

(2) Unattended property that interferes with public safety, orderly management of the ~~recreation~~ public use site or presents a significant threat to department resources may be impounded immediately.

(3) remains as proposed.

(4) Property left unclaimed pursuant to (3) will be disposed of in accordance with state Montana Operations Manual surplus property policy authorized by 18-6-101, MCA.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XIX (ARM 12.12.119) DAY USE, GROUP USE, AND SPECIAL USE PERMIT (1) Special use permits must be obtained when required. ~~Failure to obtain a special use permit when required is prohibited.~~

(2) through (6) remain as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XX (ARM 12.12.120) SOLICITING AND PUBLIC ASSEMBLY

(1) Soliciting or demanding gifts, money, goods, or services is prohibited at public use sites, except pursuant to the terms and conditions of a special use permit, ~~or~~ commercial use permit, or other contract issued by the department for such activity.

(2) Public assembly ~~of one or more individuals~~, including demonstrations, picketing, speechmaking, marching, holding vigils or services, dissemination or sharing of other information, and similar forms of conduct that involve the communication or expression of views or grievances, or are reasonably likely to attract a crowd or onlookers, are allowed at public use sites when a permit has been issued.

(3) through (6)(c) remain as proposed.

(d) the location applied for has not been designated as available under ~~(3)~~(5); or

(e) through (9) remain as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XXII (ARM 12.12.122) EMERGENCY CLOSURE CRITERIA

(1) and (1)(a) remain as proposed.

(b) the department determines that firefighting efforts on or near the public use site creates imminent peril to the public health, safety, or welfare; or

(c) the department determines that dangerous conditions exist on or near the public use site that creates imminent peril to public health, safety, or welfare.

(2) The department may reopen the public use site by repealing a temporary emergency rule when it determines that firefighting efforts or dangerous conditions on or near the area have subsided ~~to the extent that~~ and imminent peril to the public health, safety, and welfare no longer exists.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XXIII (ARM 12.12.123) NOTIFICATION OF EMERGENCY CLOSURE AREAS (1) Prior to, or simultaneously with, the effective date of the closure of a public use site, the department shall:

(a) through (d) remain as proposed.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

NEW RULE XXIV (ARM 12.12.140) PENALTIES AND APPEAL (1) remains as proposed.

(2) Individuals violating these rules may also be expelled immediately from ~~the a~~ public use site for up to 48 hours. Failure to comply with the expulsion may constitute criminal trespass.

AUTH: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA  
IMP: 23-1-102, 23-1-106, 23-1-111, 87-1-201, 87-1-301, 87-1-303, MCA

7. FWP has thoroughly considered the comments and testimony received. A summary of the comments received, and the department's responses are as follows:

COMMENT 1: A commenter said that, regarding NEW RULE VII (ARM 12.12.107), the department could not adequately inform the public about all the places where camping is allowed. The commenter also suggested that allowing camping, unless posted as prohibited, would be more effective.

RESPONSE 1: The proposed rule is consistent with the current board and commission rules prohibiting camping outside places designated or marked for that purpose. The public is familiar with these rules and where camping is allowed. The

language also allows the department to designate dispersed camping opportunities, whether signing an individual dispersed site or a general area. The proposed language helps prevent resource impacts from camping outside designated areas. The department routinely works to communicate use rules to the public. The department will continue to do so through many avenues, including signs and maps at sites, information on FWP's website, social media, and other public awareness campaigns.

COMMENT 2: Commenters said that the commission, board, and department do not have the authority to adopt NEW RULE XIII (ARM 12.12.113), affecting the right to keep or bear arms.

RESPONSE 2: The commission, board, and department have amended the rule as proposed to clarify that using a weapon on public lands must follow our state's laws and emphasize that a plea of self-defense is always allowed in response to an alleged violation of the law. The decision to prohibit weapons discharge in certain places or areas shall be based on concern for human safety and protecting property and public resources. Please note that the rule does not prevent the discharge of weapons associated with hunting where authorized.

The legislature can direct the board, commission, and department to establish rules to implement statutory programs. The commenters favor a broad reading of the U.S. Supreme Court's (SCOTUS) holding in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). In that case, SCOTUS found that a state would only issue a public-carry permit for a handgun when the individual demonstrated a "special need" to carry one for self-defense. SCOTUS held that the state's licensing regime violated constitutional rights under the Second and Fourteenth Amendments. SCOTUS held that for a law to be constitutional, the government must be able to show that current gun regulation is "consistent with this Nation's historical tradition of firearm regulation" *id.* at 2126.

Historically, including at the time of the ratification of the U.S. Constitution, government regulations reasonably restricted individuals' right to keep or bear arms in certain places or areas to protect the public's safety. The proposed rule does not limit the right to bear arms; instead, the rule restricts the right to discharge weapons in certain places or areas to protect public peace and public site users' safety.

COMMENT 3: Some commenters alleged that the proposed rule excludes weapons discharge for self-defense.

RESPONSE 3: Please see the response to comment 2. The department, board, and commission edited the rule to make it clear that self-defense with a weapon is allowed.

COMMENT 4: A prohibition on the discharge of weapons conflicts with hunting in wildlife management areas.

RESPONSE 4: The proposed rule does not prevent the discharge of weapons associated with hunting where hunting is allowed. Restricting hunting in some areas is necessary for public safety and resource management.

COMMENT 5: One commenter opposed the comments submitted by the other commenters concerning NEW RULE XIII (ARM 12.12.113).

RESPONSE 5: Please see the response to comments 2 and 3.

COMMENT 6: Some commenters opposed NEW RULE XIV (ARM 12.12.114), making state parks open to all commission-established hunting seasons unless prohibited by the board, and proposed that the rule should prohibit hunting in state parks unless expressly permitted by the board.

RESPONSE 6: The department receives federal aid derived from excise taxes on bows, arrows, archery equipment, sporting firearms, ammunition, handguns, pistols, and revolvers. Some of this federal aid is expended at state parks that have wildlife habitat value or provide shooting opportunities. There are some parks where hunting can occur safely and without diminishing the experience of other visitors. The State Parks and Recreation Board will consider these factors, along with public safety, and identify those parks where hunting would not be allowed at its December 19, 2023, meeting.

COMMENT 7: Commenters stated that the rules would reduce or restrict use and access on public lands and conflict with the 2020-2024 Statewide Comprehensive Outdoor Recreation Plan (SCORP).

RESPONSE 7: The proposal seeks to consolidate existing rules into one set for all lands for clarity and consistency. While some of the wording in the original rules was changed to propose consistent rules, care was taken to ensure that the changes do not diminish existing recreation opportunities. In a couple of instances, an additional review of the regulations as proposed revealed language was lost in the consolidation process, and the rules were amended as stated above to maintain current multi-use activities. Specific to motorized vehicles, the language in the proposed rule is the same as in the current rules that prohibit operating a motorized vehicle off authorized routes or on any road, trail, or area specifically posted against such use.

For awareness, two types of rules currently apply to motorized use in Wildlife Management Areas (WMA): the general rule and the commission biennially (or annually) adopted site-specific rules. Under the general proposed consolidated public use rules, operating snowmobiles would be prohibited on FWP lands except in designated areas. FWP would continue to offer commission biennial use rules for WMAs to identify the designated areas where snowmobiles are generally allowed on groomed trails (subject to site opening and closure dates). These biennial rules also



note exceptions for snowmobiles on designated open roads and for specified times during the year. The proposed regulations and the opportunities they provide align with the goals of multiple-use recreation opportunities outlined in the 2020-2024 SCORP.

COMMENT 8: Commenters stated that the rules would change access status to department lands from open unless posted closed to closed unless posted open, and that this change must be considered a significant action under the Montana Environmental Policy Act (MEPA).

RESPONSE 8: The department, commission, and board's proposed rules contained some grammatical choices that resulted in language that arguably could be understood as a change in use from open unless posted closed. That change was not intended; the language has been amended to clarify that intent.

COMMENT 9: Commenters stated that the rules would significantly affect the human environment and should comply with the MEPA requirements.

RESPONSE 9: Under MEPA, an action that is a change in use or condition that significantly impacts the quality of the human environment triggers the MEPA process. The department, board, and commission thought through whether the administrative rules would be considered a significant action under MEPA. It was determined that because the rules themselves do not change the current use or the condition of public lands, the MEPA process and further analysis were not required. The Montana Administrative Procedure Act (MAPA) also does not require a MEPA analysis when conducting rulemaking. When the department acts on a public use site that will significantly impact the quality of the human environment, the department will engage in the MEPA process.

COMMENT 10: Commenters stated that the department must adequately consider all the management trends that have restricted and impacted public use of public lands as part of the rule process.

RESPONSE 10: The commission, board, and department are responsible for enhancing Montana's outdoor recreation legacy on FWP-administered lands. Management trends for public lands administered by other agencies are outside this proposal's scope and the department's authority. The board, commission, and department disagree with the contention that the administrative rules result in a change or impact on FWP lands' public use and recreation.

COMMENT 11: Commenters stated that the department should consider how the public is affected when signage at state parks, fishing access sites, wildlife management areas, wildlife habitat protection areas, and fisheries conservation areas is missing, stolen, or damaged.

RESPONSE 11: The board, department, and commission post site-specific rules onsite and online for easy access to the recreating public. Staff regularly checks the status of physical signs and performs maintenance or replaces damaged or missing signs. This practice would continue under the proposed rules. The Parks and Outdoor Recreation Division is also upgrading physical signs across all site types using an appropriation from the 2021 and 2023 Legislatures to improve customer service and awareness while on FWP public lands.

COMMENT 12: Commenters stated that the proposed rules do not include an adequate public education program to accompany the rule changes.

RESPONSE 12: The proposed rules focus on consolidating existing rules into one set for all lands for clarity and consistency. While some of the wording in the original rules was changed, care was taken to ensure that the changes do not generally change existing recreation opportunities. The department routinely works to communicate use rules to the public. The department will continue to do so through many avenues, including signs and maps at sites, information on FWP's website, social media, and other public awareness campaigns.

COMMENT 13: Commenters asked who is responsible for replacing signs or ensuring all sites are signed.

RESPONSE 13: The department's maintenance staff are primarily responsible for replacing signs. Both maintenance and recreation staff are responsible for ensuring that sites are appropriately signed. The new signs will include the changes made by these rules to improve customer service and awareness.

COMMENT 14: Commenters said that "immediate vicinity" in NEW RULE IV must be reasonably defined.

RESPONSE 14: The language in the proposed rule "prohibiting the operation of sound-emitting electronic devices, such as speakers, radios, televisions, or other equipment at a volume which projects sound beyond the person's immediate vicinity in a manner that disturbs others" is the same as the language in the current rules and thus far this language has proven effective without further definition. However, because the words "beyond the person's immediate vicinity" can vary across public use sites and is not operative to how the rule is enforced, the language has been amended.

COMMENT 15: Commenters said that NEW RULE V allows the department to increase or set fees without public comment, which is unreasonable for a public agency.

RESPONSE 15: The legislature specifically exempted seasonal regulations from the MAPA rulemaking process, 2-4-102(11)(b)(iv), MCA. This rule echoes that language and notifies the public that site use fees are set through a seasonal

biennial or annual public process separate from this rulemaking. Those processes include formal public comment periods.

COMMENT 16: Commenters said that the department should be required to solicit public input on any time-special regulations for wildlife management areas.

RESPONSE 16: FWP and the commission use biennial or annual rules, not ARM, to adopt site-specific regulations for wildlife management areas (WMA). The department and commission know that site-specific annual or biennial rules for WMAs will still be needed after adopting the consolidated public use rules to address such circumstances. Adoption of those rules will go through a public comment period and be considered in a publicly held commission meeting.

COMMENT 17: Commenters recommended that the word "permanent" should be inserted between the words "any" and "structure" in the first line of NEW RULE VI(1)(d).

RESPONSE 17: The department, commission, and board amended the final rule to include language clarifying that the prohibition on the placement of structures does not apply to the temporary placement of structures for legal hunting where allowed. Examples include tree stands, goose pits, and temporary blinds. Regarding other structures, they need not be permanent to damage a site or interfere with the public's use of a site.

COMMENT 18: Commenters said that using a mineral detection device to explore for recreation is a pastime for many and should not be restricted if the person is not mining or digging.

RESPONSE 18: The public use rules require written permission to use a mineral or metal detector, magnetometer, or other metal detecting device at public use sites. This requirement ensures that these activities are not conducted in locations that could damage sensitive cultural, heritage, or natural resources.

COMMENT 19: Commenters said that NEW RULE VII and NEW RULE IX include different references to distances and confuse the public.

RESPONSE 19: The two rules and different distances serve different purposes. NEW RULE VII pertains to designated and dispersed camping sites and prohibits traveling more than 50 yards with a motorized vehicle from a designated road. The distance referred to in this rule is to allow a vehicular camping opportunity within a reasonable distance from an established road while minimizing vegetative or other resource impacts. NEW RULE IX pertains to food storage, and the distances referred to in this rule all pertain to public safety. The difference between the distances is appropriate given the differing purposes. The rule is also consistent with Forest Service food storage rules, which often adjoin FWP lands.

COMMENT 20: Commenters stated that it is unnecessary to say what is allowed in a rule listing prohibited uses in NEW RULE VIII.

RESPONSE 20: NEW RULE(VIII)(1) outlines what is prohibited in public use sites, and (2) states what is permitted. The language is amended to remove potentially misleading or confusing meanings.

COMMENT 21: Commenters recommended that the language in NEW RULE X be changed to allow for burning paper products and other items in a fire pit and that people clean all trash from the firepit before leaving the site.

RESPONSE 21: The language in this rule is to protect the public and FWP staff who frequently encounter unsafe conditions and public health concerns from refuse left behind in campfire rings, such as used diapers, broken glass, and molten aluminum. Requiring the public to remove all trash from a fire ring before leaving the site would likely result in a situation where it would be necessary to enforce a stricter standard than is currently in place. Further, the rule was reviewed and approved by the Department of Public Health and Human Services prior to the proposal of the rule to ensure compliance with public health and human sanitation laws, 23-1-111(1)(c) and 87-1-303(2), MCA.

COMMENT 22: Commentators said that NEW RULE XIII referenced the definition of "weapon" provided in 45-2-101, MCA. They recommended that the rule only list those specifically prohibited items rather than use the statutory definition that could be interpreted more broadly.

RESPONSE 22: Please see the response to comment 2. The language has been amended and includes the statutory weapon definition. The legislature defines weapons and regulates what may be used at certain times and places on FWP-controlled public land. The commission sets specific seasonal rules regarding the discharge of certain hunting arms. The board will identify at its December 19, 2023, meeting those parks where hunting would not be allowed. Only when none of the above restrictions apply does the director then determine that an occurrence creates an undue hazard to human safety, public property, or public resources, and in that instance, the board and commission authorize the director to close all or a portion of a public use site to the discharge of weapons. The language as proposed is consistent with SCORP. The rule has been amended to clarify that when sites are closed to discharge weapons, the closure will be properly noticed through signs and maps at sites, information on the department's website, social media, and other public awareness campaigns.

COMMENT 23: Commenters stated that NEW RULE XVII should not restrict "unmanned" vehicle operation except where required on a site-specific basis.

RESPONSE 23: Current administrative rules regulate unmanned vehicles in FWP sites, consistent with SCORP and the availability of multi-use recreational opportunities. Some sites, but not all, are appropriate for the operation of unmanned

vehicles. As written, the rules allow the department to permit this activity. By requiring a permit, the department can consider the circumstances, including the type of unmanned vehicle, where the use would occur, and how that use might affect other visitors or wildlife at a site.

COMMENT 24: Commenters stated that in NEW RULE XIX(4)(b) it is not reasonable for the public to be significantly impacted because the department does not have the capacity to manage an event or activity.

RESPONSE 24: The commission, board, and department manage and protect the sites they oversee. The department also works to ensure that all visitors have the opportunity to enjoy their experience. The department frequently authorizes special events and groups. There are some requests, however, for events or groups of a size that exceed the site's capacity, that conflict with the reason the site was acquired, that would unreasonably infringe on the experience of other visitors, or that could potentially jeopardize funding for future sites if the uses are not managed consistently for the protection and preservation of the natural environment. In some instances, the presence of staff can help to mitigate these impacts. Other times, the department must deny the request for the reasons mentioned above.

COMMENT 25: Commenters stated that the rules should be modified to provide significant consideration of the purpose and needs of the FWP Parks and Outdoor Recreation Division and the programs it offers, including the Off-Highway Vehicle and Snowmobile programs.

RESPONSE 25: This comment is outside the scope of this rulemaking proposal.

COMMENT 26: Commenters pointed out that in NEW RULE XX it is unreasonable to define "public assembly" as one or more individuals.

RESPONSE 26: The board, commission, and department amended the final rule to remove the language from the old public assembly rules.

COMMENT 27: Commenters recommended that NEW RULE XXI should include a definition for "temporary" and that there should be a time frame for when a temporary rule must be reviewed and steps to be taken by the department to mitigate the dangerous situation.

RESPONSE 27: Emergency closures of a public use site are done through the emergency rule process, 2-4-303, MCA. All emergencies are communicated to the board and commission and the public as soon as practicable. If the emergency is still occurring at the next commission or board meeting, then the department updates the members on the current status and any actions taken by the department to mitigate the dangers. Once the imminent peril subsides, NEW RULE XXII gives the department the authority to reopen the site.

COMMENT 28: One commenter requested that the department prepare a fiscal note for the cost of implementing rules that close a site unless posted open.

RESPONSE 28: The rule proposal restates existing rules, and the department does not expect a change in cost in implementing them to be beyond already expected costs to update signs.

COMMENT 29: One commenter asked how NEW RULE XIII applies to hunting on state forest lands and state school lands.

RESPONSE 29: NEW RULE XIII does not apply to hunting on land that is managed by the Montana Department of Natural Resources and Conservation or lands managed by the federal government.

COMMENT 30: Commenters said that not all public use sites will work with one set of rules.

RESPONSE 30: The commission, board, and department agree and have amended NEW RULE XIII to include reference to the laws that govern multiple land uses that FWP is charged with. The public use administrative rules are intended to work together with the seasonal rules adopted by the commission and the board.

COMMENT 31: A commenter opposed the portion of NEW RULE IV (ARM 12.12.104) that prohibited "arguing with" any state official as a suppression of his First Amendment right to free speech.

RESPONSE 31: The rule must be read as a whole, and states that a person may be expelled from a public use site for "threatening, resisting, intimidating, arguing with, or intentionally interfering with any official, employee or agent of the department while engaged in the performance of his or her official duties or on account of the performance of his or her official duties." Circumstances rarely require FWP to remove a person from a site, but it is an appropriate management tool that protects all users, wildlife, and public property.

COMMENT 32: One commenter asked how many pages are in Montana Code Annotated, the size of the pages, and the font size.

RESPONSE 32: This comment is outside the scope of this rulemaking proposal, but the legislature might be able to answer the inquiry.

/s/ Jaime MacNaughton  
Jaime MacNaughton  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

/s/ Dustin Temple  
Dustin Temple  
Director  
Fish, Wildlife and Parks

/s/ Russ Kipp  
Russ Kipp  
Chair  
State Parks and Recreation Board

Certified to the Secretary of State January 2, 2024.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION AND  
RULES I through XIII and the ) AMENDMENT  
amendment of ARM 12.9.1401 )  
pertaining to grizzly bears )

TO: All Concerned Persons

1. On September 22, 2023, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-614 regarding a public hearing on the proposed adoption and amendment of the above-stated rules at page 1043 of the 2023 Montana Administrative Register, Issue Number 18. On October 20, 2023, the commission published a second notice on the proposed adoption and amendment of the above-stated rules on page 1204 of the 2023 Montana Administrative Register, Issue Number 20.

2. On November 17, 2023, a public hearing was held on the adoption and amendment of the above-stated rules, via Zoom. The commission received both written and oral testimony comments by November 20, 2023.

3. The commission has amended ARM 12.9.1401 as proposed.

4. The commission has adopted NEW RULE II (ARM 12.9.1405), NEW RULE VI (ARM 12.9.1409), NEW RULE XII (ARM 12.9.1415), and NEW RULE XIII (ARM 12.9.1416) as proposed.

5. The commission has adopted the following rules from the proposal notice with the following changes based on comments received and after further review, new matter underlined, deleted matter interlined:

NEW RULE I (ARM 12.9.1404) DEFINITIONS (1) through (4) remain as proposed.

(5) "Department director" means Montana, Fish, Wildlife and Parks' director ~~or the director's designee.~~

(6) remains as proposed.

(7) "Non-lethal and preventative measures" means actions to prevent or reduce conflict that are not intended to injure or kill a grizzly bear.

~~(8) "Preventative measures" means actions that are intended to prevent or reduce conflict.~~

~~(9)~~(8) "Probable grizzly bear mortality" means a situation where there is sufficient evidence of grizzly bear blood, hair, and other grizzly bear tissues, to support a finding of death.

~~(10)~~(9) "Take" or "taken" means the confirmed and probable killing of a grizzly bear by firearm.



(11)(10) "Wildlife services" means the United States Department of Agriculture – Animal and Plant Health Inspection Service.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE III (ARM 12.9.1406) THE QUOTA AND ESTABLISHING AND ADJUSTING THE QUOTA (1) For each delisted ecosystem, the commission will establish an annual quota for the number of delisted grizzly bears that may be taken by a livestock owner or other authorized person, whether permitted or not, pursuant to 87-5-301, MCA. The commission shall consider relevant factors, including information provided to the commission by the department in the grizzly bear annual report, the most recent grizzly bear population estimate, the mortality threshold for the delisted ecosystem, and previous quotas. The quota pertains to both within and outside of the DMA.

(2) through (6) remain as proposed.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE IV (ARM 12.9.1407) THE MORTALITY THRESHOLD (1) The mortality threshold(s) is/are the maximum annual number of grizzly bear mortalities, within the DMA, that the population(s) can withstand while maintaining recovery without falling below recovery levels. These recovery levels are described in the ecosystem conservation strategies.

(2) and (3) remain as proposed.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE V (ARM 12.9.1408) GRIZZLY BEAR MORTALITIES THAT APPLY TO THE QUOTA AND THE MORTALITY THRESHOLD (1) A delisted grizzly bear taken within the DMA, pursuant to 87-5-301(3) and (4), MCA, counts towards the relevant quota and the relevant mortality threshold.

(2) The quota and the total mortalities counted towards the mortality threshold include confirmed ~~or~~ and probable grizzly bear mortalities.

(3) remains as proposed.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE VII (ARM 12.9.1410) ALLOWABLE LETHAL MANAGEMENT OF THE GRIZZLY BEAR (1) remains as proposed.

(2) Pursuant to 87-5-301(3), MCA, a livestock owner or other authorized person may take, without a permit or license, a delisted grizzly bear that is attacking or killing livestock. Take by a livestock owner or other authorized person is limited to those areas that a livestock owner's livestock are legally authorized to be.

(3) Pursuant to 87-5-301(4) and 87-6-106(4), MCA, the department director or designee may issue a permit to a person, livestock owner, or other authorized person to take a delisted grizzly bear, under the following circumstances and conditions:

(a) and (b) remain as proposed.

(c) ~~if on public land, when the bear is threatening livestock on public land, and when~~ the livestock owner has demonstrated an effort to utilize one or more non-lethal and preventative measures as determined by the department director or designee.

(4) remains as proposed.

(5) If a person, livestock owner, or other authorized person, whether permitted or not, takes or injures a delisted grizzly bear, pursuant to 87-5-301(3) and (4) or 87-6-106(4), MCA, they shall:

(a) through (e) remain as proposed.

(6) A person, livestock owner, or other authorized person, who purposefully injures or kills a delisted grizzly bear by any other means, besides a firearm, is subject to criminal penalties, pursuant to 87-6-201, MCA.

(7) Pursuant to 87-5-301(4)(b) and 87-6-106(4), MCA, the department has the discretion to lethally remove a delisted grizzly bear. If a delisted grizzly bear is lethally removed by department or wildlife services' staff, after conducting an on-site investigation, the delisted grizzly bear does not count towards the quota. However, if the lethal removal occurred inside of the DMA, the delisted grizzly bear will count towards the mortality threshold.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE VIII (ARM 12.9.1411) ALLOWABLE NON-LETHAL MEASURES OR AND PREVENTATIVE MEASURES OF THE GRIZZLY BEAR (1) As allowed by 87-5-301 and 87-6-106(4), MCA, control of the grizzly bear includes a variety of non-lethal ~~measures or and~~ preventative measures intended to decrease risk of, prevent, or resolve a conflict without killing the grizzly bear in question. Allowable non-lethal ~~measures or and~~ preventative measures include, but are not limited to:

(a) through (g) remain as proposed.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, 87-6-106, MCA

NEW RULE IX (ARM 12.9.1412) BAITING GRIZZLY BEARS AND NORMAL LIVESTOCK AND AGRICULTURAL OPERATIONS (1) A person may not intentionally bait a grizzly bear. Normal livestock and agricultural operations are not considered baiting.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-5-301, MCA

NEW RULE X (ARM 12.9.1413) REQUIREMENT TO MANAGE ANY DELISTED GRIZZLY BEAR POPULATION FOR FIVE YEARS PRIOR TO A HUNTING OR HARVEST SEASON (1) The department shall manage any delisted grizzly bear population for at least five years from the time of delisting prior to proposing any hunting season or ~~harvest~~ for delisted grizzly bears.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

NEW RULE XI (ARM 12.9.1414) GRIZZLY BEAR ANNUAL REPORT

(1) through (2)(d) remain as proposed.

(e) the number, types, and general locations of human-bear conflicts; and

(f) remains as proposed.

AUTH: 87-1-201, 87-1-301, MCA

IMP: 87-1-201, 87-1-301, 87-5-301, MCA

6. The commission has thoroughly considered the comments and testimony received. A summary of the comments received, and the commission's responses are as follows:

COMMENT 1: Some commenters provided comment on ARM 12.9.1401 outside of the amendments proposed in the notice, as it relates to sport hunting and relocation of grizzly bears.

RESPONSE 1: Public comments pertaining to ARM 12.9.1401 that do not relate or reference the proposed amendments are outside of the scope of the proposed rulemaking. While the department welcomes public comments, those focused on verbiage or passages that remain unchanged in ARM 12.9.1401 are not applicable for this public process.

COMMENT 2: Some commenters want improved clarity on where these rules apply and whether the United States Fish and Wildlife Service (USFWS) maintains authority for grizzly bears in ecosystems still listed under the Endangered Species Act (ESA). Some commenters want grizzly bears to remain listed and protected by the ESA due to associated concerns regarding suitable habitat, migration corridors, and land use practices. Some commenters support the delisting of grizzly bears.

RESPONSE 2: New Rule XIII (ARM 12.9.1416) explains that New Rules I through XII only apply to grizzly bears that have been delisted by the USFWS. The USFWS asked that the new rules state that these rules pertain to "delisted" grizzly bears. The commission agrees with the USFWS and "delisted" has been added throughout the new rules. Grizzly bears are organized by the USFWS into recovery zones and ecosystems. Delisting individual ecosystems is expected to occur through designation of distinct population segments (DPS) that contain the specific ecosystem. Delisted ecosystems encompass the DMA(s) and recovery zone(s). Protections of grizzly bears are maintained, evaluated, and determined by the

USFWS, and thus parameters and criteria surrounding the delisting/relisting process are outside of the scope of these rules. Where grizzly bears remain listed, the USFWS and 50 C.F.R. § 17.40 (the "4d rule") authorize lethal control.

COMMENT 3: Some commenters do not understand why these proposed new rules are preceding delisting of a distinct population segment.

RESPONSE 3: These rules provide a regulatory framework for Montana's management of grizzly bears, which is part of the criteria evaluated by the USFWS for delisting. Additionally, Senate Bill 295 (2023 Montana Legislature) required the commission to complete rulemaking prior to delisting.

COMMENT 4: Some commenters support or oppose Senate Bill 295.

RESPONSE 4: Legislative processes are the mechanism for the adoption, amendment, or repeal of statutes, and administrative rules result from public rulemaking processes intended to more precisely implement statutes. Public comment on legislative bills and/or statutes are outside of the scope of these proposed rules. If a member of the public would like to comment on the adoption, amendment, or repeal of a statute, they would do so during the legislative session. As a result, these comments are outside of the scope pertaining to these proposed rules.

COMMENT 5: Some commenters want to see a commitment by the department to abide by grizzly bear conservation strategies.

RESPONSE 5: The department recognizes the value and importance of conservation strategies in grizzly bear recovery and management post-delisting. However, multiple partners are involved in conservation strategies. Given this, the department will make efforts to update and apply the most recent conservation strategy model, or its functional replacement, to help guide successful state management of recovered grizzly bears.

COMMENT 6: Some commenters believe the definition of "take" in NEW RULE I (ARM 12.9.1404(8)) will be confused with the definition used under ESA.

RESPONSE 6: Because NEW RULE XIII (ARM 12.9.1416) explains that NEW RULES I through XII only apply to grizzly bears that have been delisted by the United States Fish and Wildlife Service, the definition of "take" or "taken" in NEW RULE I (ARM 12.9.1404(8)) does not include the other forms of take (e.g., disturb, harass) as defined under the Endangered Species Act.

COMMENT 7: Some commenters suggested NEW RULE II (ARM 12.9.1405) further define "connectivity" to be both genetic and demographic.

RESPONSE 7: As stated in NEW RULE II (ARM 12.9.1405), the department's grizzly bear management objective is to maintain and enhance Montana's

contribution to the grizzly bear population in the lower-48 states and the connectivity between grizzly bears in and outside Montana. This includes both natural genetic and demographic connectivity, as well as augmentation as described in NEW RULE XII (ARM 12.9.1415).

COMMENT 8: Some commenters want to see improved clarity differentiating quotas and mortality thresholds, identifying ambiguity regarding where, geographically, quotas and mortality thresholds will apply.

RESPONSE 8: Quotas refer to the number of delisted grizzly bears that are attacking or killing livestock that may be taken by a livestock owner or other authorized person, whether permitted or not, pursuant to 87-5-301, MCA, both within and outside of the DMA. The mortality threshold(s) is/are the maximum annual number of grizzly bear mortalities, within the DMA, that the population(s) can withstand to maintain recovery. This includes all causes of mortality, such as grizzly bears taken from quotas, by the department, Wildlife Services, or individual persons in self-defense, vehicle collisions or incidental take, and an estimation of those unreported/undocumented. To ensure clarity, the commission added "[t]he quota pertains to both within and outside of the DMA," to NEW RULE III (ARM 12.9.1406(1)).

COMMENT 9: Some commenters want to see improved clarity on the timeframe for which quotas will function.

RESPONSE 9: The commission does not agree that a timeframe, indicating when the quota will apply, is necessary. NEW RULE III (ARM 12.9.1406(1)) states that an "annual" quota will be established. Simply stated, the quota is intended to encompass the active bear season and would not run past one year in length. This approach ensures adequate time to summarize relevant data across jurisdictions.

COMMENT 10: Some commenters suggested specific and objective biological criteria as it relates to quotas be explicitly outlined in NEW RULE III (ARM 12.9.1406).

RESPONSE 10: In NEW RULE III (ARM 12.9.1406), there are no listed specific biological criteria as it relates to the mentioned quota. The department will present a formal quota recommendation, based on data and trends, and solicit public comment on such quota proposals. Following public comment, a final recommendation is forwarded to the commission for consideration. Through annual commission oversight and public input, and at its discretion, the commission may use the department's proposed quota recommendations. Quotas may depend on regional densities, distributions, trends, and sociopolitical environment. A similar process would occur if/when a hunting season of grizzly bears is established in a delisted ecosystem. As a result, specific and objective quotas are unnecessary in rules and may be overly rigid for a process designed to be flexible. Nevertheless, the department is committed to ensuring mortality thresholds for each DMA are not exceeded.

COMMENT 11: Some commenters believe it is unclear what criteria the commission may use to establish or adjust a quota.

RESPONSE 11: The commission shall consider relevant factors, including information provided to the commission by the department in the grizzly bear annual report, the most recent grizzly bear population estimate, the mortality threshold for the delisted ecosystem, and previous quotas when determining an established quota, as per NEW RULE III (ARM 12.9.1406(1)). The commission shall also consider the aforementioned factors when adjusting the quota (NEW RULE III ARM 12.9.1406(6)) to ensure that recovery is maintained.

COMMENT 12: Some commenters believe a longer grace period should be established between the department's notice of a quota being reached and when someone becomes subjected to potential criminal penalties, as per NEW RULE III (ARM 12.9.1406(5)). Some commenters want the department to directly contact any person(s) to whom a permit has been issued to inform them personally when a quota is met, and that a permit-holder who has not been notified is exempt from criminal liability.

RESPONSE 12: When a quota is reached, the department will make a public announcement, via its webpage and social media page as per NEW RULE III (ARM 12.9.1406(4)). Public notice of a quota being reached will be done during business hours. It is reasonable for an individual to see that notice prior to the end of that day. It is the responsibility of the permit-holder to stay informed as to the status of quotas.

COMMENT 13: Some commenters want removal of NEW RULE III (ARM 12.9.1406(2)) and believe all mortalities should count toward the quota regardless of where they occur.

RESPONSE 13: Quotas refer to the number of delisted grizzly bears attacking or killing livestock that may be taken by a livestock owner or other authorized person, whether permitted or not, pursuant to 87-5-301, MCA, both within and outside of the DMA. These grizzly bears also apply to the mortality threshold if the take occurs within the DMA. Grizzly bears taken by the department, Wildlife Services, or an individual person in self-defense do not count towards the quota but do count towards the mortality threshold if within the DMA. Senate Bill 295 speaks entirely to persons, livestock owners, and other authorized persons' ability to take a delisted grizzly bear. The ability for a person to take a grizzly bear in self-defense, or for Wildlife Services and/or the department to take a grizzly bear has been in place and will continue to remain in place, exclusive of the quota. Thus, these subtle differences differentiate the cause of take of grizzly bears and where they apply.

COMMENT 14: Some commenters believe it is unclear what criteria will be used to determine the mortality threshold and seek clarification on how population estimates

relate to the DMA and associated mortality threshold. Some commenters believe mortality rates are too high and the gene pool too small.

RESPONSE 14: Conservation strategies containing demographic criteria and mortality thresholds have been developed using the best available science for recovered ecosystems as a condition of delisting. Annual mortality limits consider the most recent grizzly bear population estimate, population trends, previous reported and unknown mortalities for the delisted ecosystem, among other environmental factors, when determining the mortality threshold. Mortality rates, causes, and related data (i.e., genetic connectivity) are intensively monitored.

COMMENT 15: Some commenters seek clarification that the calculated estimate of unknown/unreported mortalities counts towards mortality thresholds.

RESPONSE 15: The established mortality threshold is the maximum annual number of grizzly bear mortalities, within the DMA, that the population can withstand to maintain recovery. This includes all types and causes of mortalities as described in NEW RULE IV (ARM 12.9.1407(2)), including a calculation of unknown/unreported grizzly bear mortalities.

COMMENT 16: Some commenters believe quotas should be less than mortality thresholds and/or there should be a "cushion" between the two values.

RESPONSE 16: Because quotas pertain to areas both within and outside of the DMA, they could be greater than the mortality threshold(s). If the number of grizzly bear mortalities is approaching the mortality threshold for a DMA, a quota may be restricted to areas outside of the DMA. As per NEW RULE III (ARM 12.9.1406(6)), if the commission determines that circumstances require an adjustment to the total number of delisted grizzly bears taken, pursuant to 87-5-301(3), MCA, then it may adjust the quota at any time prior to the quota being met. Quotas and mortality thresholds ensure that mortality rates (from any cause) do not threaten the recovery of grizzly bears.

COMMENT 17: Some commenters are confused on what qualifies as "recovery levels" and seek clarification on the maximum number of annual mortalities a population can withstand without falling below recovery levels in a DMA.

RESPONSE 17: Federal recovery levels are determined by the USFWS and are outlined in the federal recovery plan and ecosystem conservation strategies. Recovery criteria were initially contained in the federal recovery plan and have been modified based on new, available science that are described in the ecosystem conservation strategies. The maximum number of annual mortalities the population can withstand to maintain recovery in a DMA is not defined to ensure population sustainability. These values are dependent on several factors, will fluctuate based on those factors, and correspond to the respective delisted ecosystem. NEW RULE IV (ARM 12.9.1407(1)) has been modified to emphasize FWP's commitment to

maintaining grizzly bear populations above recovery levels as determined by the USFWS.

COMMENT 18: Some commenters support the inclusion of "probable" mortalities in the definition of "take."

RESPONSE 18: The commission agrees that this change is needed. Adding "probable" to the definition of "take" or "taken" will safeguard against overtake of grizzly bears and assist in maintaining recovery levels of delisted grizzly bears. Given that "probable" was included, the commission agrees that "confirmed" is also necessary.

COMMENT 19: Some commenters support lethal control of grizzly bears in the act of attacking or killing livestock. Some commenters oppose lethal control of grizzly bears without a permit. Some commenters oppose the lethal take of grizzly bears by any private person(s). Some commenters oppose the lethal control of grizzly bears on public lands. Some commenters oppose the lethal control of threatening grizzly bears. Some commenters want documentation related to livestock depredation by a grizzly bear prior to lethal control. Some commenters want documentation and record-keeping of threatening grizzly bear incidences. Some commenters believe that because private and public land are interspersed, having consistent rules across landownership types is important. Some commenters expressed concern that take of grizzly bears on public land by private person(s) may create public safety issues and, therefore, should not be allowed and/or should only be conducted by bear management specialists.

RESPONSE 19: NEW RULE VII (ARM 12.9.1410) reflects state mandates. If a grizzly bear is attacking or killing livestock, a livestock producer or other authorized person may take a grizzly bear without a permit as a means of protection of property, as per 87-5-301(3), MCA. Take by a livestock owner or other authorized person is limited to those areas that a livestock owner's livestock are legally authorized to be. This includes private and public lands. Additionally, there is no requirement that the livestock owner or other authorized person provide documentation related to the depredation incident, nor that the department draft or retain documentation related to that depredation incident. Livestock depredations by grizzly bears are typically documented and confirmed by Wildlife Services. State law requires this confirmation before a livestock owner may be compensated for the loss. Take of threatening grizzly bears on private and public lands, with a permit, may also occur in the future, as per 87-5-301(4) and 87-6-106(4), MCA. Conditions of such action are described in NEW RULE VII (ARM 12.9.1410(3)). The department understands that there are scenarios in which lethal grizzly bear-livestock conflict mitigation must take place, even if on public lands. Bear management specialists or other department personnel may assist if requested and may be involved in any aftermath if the attempted take was not successful, especially if human safety is a concern.



COMMENT 20: Some commenters identified a lack of clarity in NEW RULE VII (ARM 12.9.1410(3)(a) through (c)), and whether all of the criteria had to be met or any of the three prior to the department's issuance of a permit. Some commenters want improved clarity regarding where take permits apply (i.e., private and/or public lands).

RESPONSE 20: FWP has edited NEW RULE VII (ARM 12.9.1410(3)(a) through (c)) to increase clarity concerning the criteria needed and where the permits apply.

COMMENT 21: Some commenters raised concerns regarding the potential for lag time between incidents and the response, specifically noting NEW RULE VII (ARM 12.9.1410(3)(c)). Some commenters believe bear management specialists should be involved in any decision-making at the director or designee level.

RESPONSE 21: Bear management specialists play a vital role in grizzly bear management. While they may make recommendations based on their regional and local expertise, some decisions may be exclusively made at the Director's Office level. The director's designee may include bear management specialists and technicians, area biologists, wildlife managers, and game wardens, among other designated personnel. The commission is aware of the department's history with grizzly bear conflicts and its prompt response time regarding those incidents. Given the department's success and current advances in technology, the commission does not anticipate lag time to be an issue. Moreover, in reviewing comments concerning "lag time," the commission recognized a clerical oversight concerning the definition of "department director." Senate Bill 295 identifies that the complaint must be made to the "department director." Accordingly, NEW RULE I (ARM 12.9.1404(5)) now excludes any reference to "or the director's designee."

COMMENT 22: Some commenters stated that "attacking" and "threat" or "threatening" were not clearly defined, and are thus ambiguous. Some commenters stated that "non-livestock related property losses," "consistent presence," and "proximity" were not clearly defined, and are thus ambiguous.

RESPONSE 22: The terms "attacking," "threat," "threatening," "non-livestock related property losses," "consistent presence," and "proximity" are to be given their plain and normal meaning, and require no regulatory definition. By excluding a definition for the aforementioned terms, the department is afforded maximum flexibility to respond/address the scenario.

COMMENT 23: Some commenters believe grizzly bears that are "taken" should be reported immediately or in a shorter timeframe versus within a 24-hour period, as per NEW RULE VII (ARM 12.9.1410(5)).

RESPONSE 23: A 24-hour period to report a "taken" grizzly bear is reasonable, practical, and timely. The department understands that some of these occurrences may happen in remote, rural, and/or backcountry areas, and immediate reporting may not be possible.

COMMENT 24: Some commenters expressed concern that there was a lack of clarification as to what qualifies as a "non-lethal and preventative measure," no emphasis on adequacy and appropriateness of that strategy, and that the determination is up to the sole discretion of the department to determine if efforts made were sufficient to justify a take. Some commenters want "demonstrating an effort" to be defined as, for example, employing at least one non-lethal and preventative measure and requiring implementation of that strategy or strategies for some set period of time prior to allocating a permit in NEW RULE VII (ARM 12.9.1410(3)(c)). Some commenters want record-keeping and documentation by professionals of non-lethal and preventative measures demonstrated by the livestock owner and/or producer prior to permit allocation. Some commenters believe the requirement of utilization of non-lethal and preventative measures should extend to private lands. Some commenters want recognition that sometimes there are no non-lethal and preventative measures that are adequate or appropriate, and anticipation of grizzly bear presence and associated implementation of non-lethal and preventative measures may not be possible due to their rapid expansion. Some commenters do not want to see a list of non-lethal and preventative measures in NEW RULE VIII (ARM 12.9.1411). Some commenters want to see a process for livestock owners to object to the department's determinations regarding the demonstration of an effort to utilize non-lethal and preventative measures and if the public should interfere with such efforts (i.e., a safeguard for liability).

RESPONSE 24: Some non-lethal and preventative measures to mitigate grizzly bear-livestock conflict are listed in NEW RULE VIII (ARM 12.9.1411). This list is not exhaustive and allows for flexibility, technological advances, or consideration of new or other tools. Sometimes non-lethal and preventative measures have already been implemented, or non-lethal and preventative measures are not adequate or appropriate. Due to the expansion and growth of the grizzly bear population, grizzly bears can unknowingly exist in an area, and non-lethal and preventative measures are not a consideration at that time. Further, the department cannot enforce what a private landowner decides to implement on their own property, and some non-lethal and preventative measures cannot be implemented on public land without proper permitting or compliance with the Montana Environmental Policy Act. As a result, more stringent guidelines or requirements are inappropriate. As noted previously, non-lethal and preventative measures may be documented and verified by the director's designee prior to the allocation of a permit. Lastly, the commission recognized a clerical error concerning the definitions of "non-lethal measures" and "preventative measures." Senate Bill 295 couples the two together. Accordingly, any reference to "non-lethal measures" has now been edited to read "non-lethal and preventative measures," and includes the definition of "preventative measures." Lastly, the commission does not agree that an objection or appeals process is necessary. The livestock owner or their authorized person can take a delisted grizzly bear if the grizzly bear is attacking or killing livestock.

COMMENT 25: Some commenters want to see scare devices and other nearby attractants added to NEW RULE VIII (ARM 12.9.1411), and that (1)(f) should be moved to (1)(a).

RESPONSE 25: Examples of NEW RULE VIII (ARM 12.9.1411(1)(a)) "carcass removal" assumes attractant removal. Adding a reference to removing "other nearby attractants" is vague and may be impracticable. Moreover, (1)(c) states "hazing in a non-injurious manner," which may involve scare devices such as flashing lights and/or alarms. Lastly, the organization of (1)(a) through (f) is not in a hierarchical order, and the structure of components in (1) does not reflect their relative importance or support as perceived by the department.

COMMENT 26: Some commenters believe the term "baiting" is unclear. Some commenters want to see agricultural operations included in NEW RULE IX (ARM 12.9.1412).

RESPONSE 26: Baiting is described in NEW RULE IX (ARM 12.9.1412). Baiting is different than the presence of attractants and is considered intentional. The commission agrees that NEW RULE IX (ARM 12.9.1412) should include reference to agricultural operations, and it is now included in this rule.

COMMENT 27: Some commenters support a delay in proposing a hunting season of grizzly bears, and/or, upon delisting, establishment of a hunting season in general. Some commenters oppose a five-year delay in proposing a hunting season of grizzly bears. Some commenters oppose the establishment of a hunting season of grizzly bears.

RESPONSE 27: Grizzly bears are statutorily classified as a game animal (87-2-101, MCA). As a result, upon delisting, FWP could recommend a hunting season for grizzly bears. However, per NEW RULE X (ARM 12.9.1413), the department is committed to prohibiting any hunting season for grizzly bears for at least five years from the time of delisting. If after five years post-delisting, the department determines a grizzly bear hunting season is warranted, the department must submit its recommendation to the commission for its consideration. Following public comment, the commission may approve a hunting season for grizzly bears.

COMMENT 28: Some commenters want first-year cubs to be included in the population estimate in NEW RULE XI (ARM 12.9.1414(2)(a)).

RESPONSE 28: The population estimate included in the Grizzly Bear Annual Report, NEW RULE XI (ARM 12.9.1414(2)(a)), does not include cubs under one year of age due to their low survivability rates. That said, cubs over one year of age are included in the population estimate, and, by virtue, included in the Grizzly Bear Annual Report. Population estimates will be calculated using the best available science as appropriate, and consistent with conservation strategies.

COMMENT 29: Some commenters want information regarding climate change and habitat loss included in NEW RULE XI (ARM 12.9.1414(2)(d)).

RESPONSE 29: As per New Rule XI (ARM 12.9.1414(2)(d)), "potential for future population level impacts" may include critical descriptions and details (from analysis, literature review, etc.) on population level impacts. This may include information about climate and habitat variability among other factors, like genetic and demographic connectivity as described in NEW RULE XI (ARM 12.9.1414(2)(c)).

COMMENT 30: Some commenters believe the outcome of conflicts, non-lethal and preventative measures used, and attractants in the area should also be listed in NEW RULE XI (ARM 12.9.1414(2)(e)).

RESPONSE 30: As per NEW RULE XI (ARM 12.9.1414(2)(e)), information on the outcome of conflicts (i.e., management actions), non-lethal and preventative measures used (if any), and attractants in the area (if any) may be included and described in Grizzly Bear Annual Report. If included, location information will be general, as edited in NEW RULE XI (ARM 12.9.1414(2)(e)), for the protection of the livestock or agricultural producer. This information may be recorded in forms/files and tabulated in a database for internal FWP use.

COMMENT 31: Some commenters believe the department should trap and transplant problem grizzly bears to new areas to restore populations, or that translocated grizzly bears be radio-collared, and that spatiotemporal data be relayed to Wildlife Services and livestock and agricultural producers if translocation efforts result in conflict. Some commenters oppose NEW RULE XII (ARM 12.9.1415) and believe it should be removed, or if retained, should be outlined as a tool and not a duty.

RESPONSE 31: The department will continue to translocate grizzly bears to augment genetic and demographic connectivity after delisting. The department encourages and will continue to promote the natural movement of individuals between populations, as genetic and demographic connectivity continues to be an outlined objective. The department may radio-collar grizzly bears that are translocated/relocated. Spatiotemporal data may be shared with Wildlife Services and/or agricultural/livestock producers when appropriate. Translocation/relocation sites are approved by the commission.

COMMENT 32: Some commenters recognize that lethal management of grizzly bears is a tool that is required to ensure human safety and address harmful conflicts. Some commenters want clarification on how grizzly bears taken in self-defense (87-6-106, MCA) will be counted.

RESPONSE 32: Pursuant to 87-6-106, MCA, a grizzly bear can be taken without a permit only if attacking or killing a person. In that instance, the grizzly bear will not count towards the quota; however, if the take occurs inside of the DMA, the delisted grizzly bear will count towards the mortality threshold. If delisted, a grizzly bear that

is threatening livestock or poses a threat to humans may only be taken with a permit, as per NEW RULE VII (ARM 12.9.1410). If a grizzly bear that is threatening livestock or poses a threat to humans is "taken," that grizzly bear counts towards the quota, and towards the mortality threshold if taken within the DMA.

COMMENT 33: Some commenters want the state to continue to play a significant role as a partner in conflict prevention efforts, want to see an enhancement in educational information and outreach, or want the department to continue to allocate resources and support grant programs to make these prevention tools more accessible to private landowners, farmers, and ranchers.

RESPONSE 33: The department plays, and will continue to play, a prominent role as a partner in conflict prevention efforts. Similarly, the department works to provide and enhance educational information and outreach opportunities geared toward the public. Such examples include bear-aware-focused materials and events. Bear management specialists regularly work with livestock producers and non-governmental organizations (NGOs) to implement preventative measures. Other organizations, such as the Montana Livestock Loss Board, provide pamphlets that describe non-lethal and preventative measures and have grants available to assist in funding such efforts (<https://liv.mt.gov/Attached-Agency-Boards/Livestock-Loss-Board/index>). Ongoing and future efforts (e.g., Delivering Carnivore Conflict Prevention Workshop) with NGOs regarding partnerships or projects will continue into the future.

COMMENT 34: Some commenters believe a legal requirement to carry and utilize bear spray prior to firearms should be established in these rules.

RESPONSE 34: Bear spray is generally considered highly effective in deterring a grizzly bear attack (Herrero and Higgins 1998, Smith et al. 2008). Although windy or extremely cold conditions can compromise the effectiveness of bear spray, Smith et al. (2021) concluded that it would still have utility under most adverse conditions. The department encourages those recreating to carry bear spray. However, some situations (e.g., proximity, grizzly bear behavior, timeframe of interaction) may not allow for the use of bear spray. In an effort to prioritize human safety, the commission declines to establish rules on tools available for use when there is an interaction involving a grizzly bear. As per 87-6-106, MCA, a person can lawfully take a grizzly bear that is attacking or killing a person, with or without a permit. If the outcome of such interaction results in a grizzly bear mortality, it will be investigated by the department. Grizzly bears taken under these circumstances do not count toward the quota but will count towards the mortality threshold if within the DMA.

COMMENT 35: Some commenters expressed concern and/or confusion on how these rules impact or influence the responsibilities and authority of Wildlife Services.

RESPONSE 35: These rules do not discredit or supersede the memorandum of understanding with Wildlife Services and their role in the investigations and responses of depredation events. As such, depredations of livestock on private and

public lands found by the livestock producer will continue to be investigated and addressed through Wildlife Services. Grizzly bears taken under these circumstances do not count toward the quota but will count towards the mortality threshold if within the DMA (NEW RULE VII ARM 12.9.1410(7)). These rules are meant as additional tools to mitigate the complexity surrounding livestock and human conflict involving grizzly bears.

COMMENT 36: The USFWS suggested that NEW RULE IV (ARM 12.9.1407(1)) be revised to state that the "population(s) can withstand below recovered levels as outlined in the most recent version of the Conservation Strategy."

RESPONSE 36: The commission modified the language of NEW RULE IV (ARM 12.9.1407(1)) so that it now states "...that the population can withstand while maintaining recovery levels. These recovery levels are described in the ecosystem conservation strategies."

COMMENT 37: The USFWS suggested that NEW RULE V (ARM 12.9.1408(2)) state "and" rather than "or" when referring to confirmed/probable grizzly bear mortalities.

RESPONSE 37: The commission agrees that this change is necessary. This was a clerical oversight, and NEW RULE V now correctly states "and."

7. The commission has determined the following edits were required for clarification purposes:

NEW RULE V (ARM 12.9.1408(1)) excluded the term "relevant" before "quota," but included the term "relevant" before "mortality threshold." To remain consistent throughout the rule, the commission inserted "relevant," and the sentence now reads "the relevant quota and the relevant mortality threshold."

NEW RULE VII (ARM 12.9.1410(3)) excluded "or designee." Senate Bill 295 states that the "director or director's designee may...issue a permit." To remain consistent with Senate Bill 295, the commission amended the sentence to read, "the department director or designee may issue a permit to a person."

NEW RULE X (ARM 12.9.1413) included a reference to a "harvest" season. The commission does not intend to implement a "harvest" season, and, as a result any reference to a "harvest season" is now excluded. Moreover, NEW RULE X excluded terms that helped identify the department's commitment to manage any delisted grizzly bear population for five years prior to a hunting season. The commission added "at least" and "from the time of delisting" to ARM 12.9.1413(1) to clarify a commitment and to indicate the hiatus begins upon delisting.

/s/ Alexander Scolavino  
Alexander Scolavino  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State January 2, 2024.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 12.9.1303 pertaining to control )  
methods of the gray wolf include )  
nonlethal and lethal means )

TO: All Concerned Persons

1. On October 6, 2023, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-615 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1121 of the 2023 Montana Administrative Register, Issue Number 19.

2. On November 3, 2023, a public hearing was held on the proposed amendment of the above-stated rule, via Zoom. The commission received both written comments and oral testimony by the November 6, 2023 deadline.

3. The commission has amended the following rule with the following changes based on comments received and after further review, new matter underlined, deleted matter interlined:

12.9.1303 CONTROL METHODS OF THE GRAY WOLF INCLUDE  
NONLETHAL AND ~~LEGAL~~ LETHAL MEANS (1) through (6) remain as proposed.

AUTH: 87-1-201, 87-1-301, 87-1-901, 87-5-105, 87-5-110, 87-5-131, MCA  
IMP: 87-1-201, 87-1-301, 87-1-901, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

4. The commission has thoroughly considered the comments and testimony received. A summary of the comments received, and the commission's responses are as follows:

COMMENT 1: Two commenters suggested that ARM 12.9.1303 should retain reference to the Montana Gray Wolf Management Plan and/or replace/update the reference to be concurrent with the most recent wolf conservation and management plan. The commenters are in opposition and do not support moving forward with this amendment.

RESPONSE 1: The commission believes any rule reference to a wolf conservation and management plan is inappropriate. Wolf plans contain recommendations to guide the decision-making processes in accordance with governing law.

COMMENT 2: One commenter said that the proposal for ARM 12.9.1303(2), presented during the August 2023 commission meeting contained the phrase "...for



any lethal control decision....," and that this phrase was not present in the proposal for ARM 12.9.1303(3) during the September 2023 commission meeting.

RESPONSE 2: Inclusion of this language in the proposal for the August 2023 commission meeting was a clerical error. The phrase "for any lethal control decision" was previously used language that was ultimately removed from ARM 12.9.1303 in 2014. Unfortunately, the old language was mistakenly included in the materials for the August 2023 commission meeting. This mistake was remedied in the materials presented for the September 2023 commission meeting.

COMMENT 3: One commenter said that the title of ARM 12.9.1303 previously stated "LETHAL" during the August commission meeting and stated "LEGAL" during the September commission meeting. The commenter suggests the title should read "LETHAL."

RESPONSE 3: The commission agrees that this change is needed. This was a clerical oversight, and the rule catchphrase now correctly references "LETHAL."

COMMENT 4: Two commenters said that because the September 2023 commission meeting violated public meeting laws, and there is an ongoing lawsuit pertaining to it, moving forward with the amendments to this rule is unlawful.

RESPONSE 4: This comment does not require acceptance or rejection by the commission regarding the substance of the rule as proposed.

/s/ Alexander Scolavino  
Alexander Scolavino  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State January 2, 2024.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of an        ) NOTICE OF ADOPTION OF  
emergency rule closing the                ) EMERGENCY RULE  
Fairweather Fishing Access Site in        )  
Gallatin County                                )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Fairweather Fishing Access Site:

(a) There are ice jams on the Missouri River that have caused water to channel and flood multiple portions of the Fairweather Fishing Access Site.

(b) The combination of dangerous conditions includes changing flooded areas throughout the site, moving ice and debris, and potentially unstable trees that could fall, rendering unsafe conditions for pedestrian and vehicle travel.

(c) Persons recreating at the fishing access site would be at risk of injury or drowning.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, due to the combination of unsafe conditions, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. This emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 1 of the 2024 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-1285; or e-mail cbell@mt.gov.

3. The emergency rule is effective January 5, 2024, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE 1 FAIRWEATHER FISHING ACCESS SITE EMERGENCY CLOSURE

(1) The Fairweather Fishing Access Site is located along the Missouri River in Gallatin County.

(2) The Fairweather Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule will remain in effect until the department determines that the site is again safe for public occupancy. This will depend on the extent and duration of the ice jams on the river causing flooding into the fishing access site. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA  
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to: Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; or e-mail [cbell@mt.gov](mailto:cbell@mt.gov). Any comments must be received no later than February 12, 2024.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website ([leg.mt.gov](http://leg.mt.gov)), were contacted by e-mail on January 5, 2024.

/s/ Quentin Kujala  
Quentin Kujala  
Chief of Conservation Policy  
Department of Fish, Wildlife and Parks

/s/ Kevin Rechkoff  
Kevin Rechkoff  
Rule Reviewer

Certified to the Secretary of State January 5, 2024.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.17.127 pertaining to )  
prevailing wages )

TO: All Concerned Persons

1. On October 20, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-17-407 regarding the public hearing on the proposed changes to the above-stated rule, at page 1240 of the 2023 Montana Administrative Register, Issue No. 20.

2. On November 9, 2023, a public hearing was held on the proposed changes to the above-stated rule via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: A commenter stated they did not support the rulemaking.

RESPONSE 1: The comment is noted. Because further detail was not provided, further response is not feasible.

COMMENT 2: A commenter suggested that prevailing wages should not be allowed to decrease. Similarly, a commenter noted decreases in certain laborer wage rates.

RESPONSE 2: Establishment of prevailing wage rates is statutorily driven. Those statutes require a survey of wages paid to determine the appropriate rates. The statutes do not provide for a prohibition on a decrease in wage rates. To the extent the comment is intended to suggest an alternative methodology for the calculation of rates, it is outside the scope of this rulemaking.

COMMENT 3: A commenter requested that the heavy construction rate schedule should include a Cement Mason rate.

RESPONSE 3: The department has reviewed the survey data received and determined that no rate can be established. Pursuant to rule, fewer than 40 workers were reported, there is no applicable collective bargaining agreement, and there is no federal rate. As such, the rate is not established.

COMMENT 4: A commenter requested recalculation of Operator 3, 4, and 5 classifications, and suggested higher rates be set for certain of the classifications.

RESPONSE 4: The department has reviewed the Operator 3, 4, and 5, classifications and rates and determined them to have been appropriately calculated pursuant to applicable administrative rules.

COMMENT 5: A commenter suggested that Operator 1 and 2 zone pay should be calculated the same as Operator 3 through 7 zone pay.

RESPONSE 5: The department has reviewed Operator 1 and 2 zone pay and determined them to have been appropriately calculated pursuant to applicable administrative rules. Operator 3 through 7 were also appropriately calculated. The wage rates received split operator types between dirt work (1 and 2) and crane work (3 through 7). Crane work receives per diem rather than zone pay.

COMMENT 6: A commenter suggested that Operator 1 and 2 should have a higher fringe benefit to correspond to other Operator groups.

RESPONSE 6: In reviewing the Operator 1 and 2 fringe rates, it was determined that Operator 1 was incorrectly calculated. It should be \$14.40 instead of \$14.10. The change is set forth below.

COMMENT 7: A commenter suggested that the fringe benefit for truck drivers should be similar to operators.

RESPONSE 7: The department has reviewed the fringe benefit rates and determined them to have been appropriately calculated pursuant to applicable administrative rules.

COMMENT 8: A commenter suggested that operators, laborers, and truck drivers should have a zone pay established.

RESPONSE 8: The department has reviewed the noted rates and determined them to have been appropriately calculated pursuant to applicable administrative rules. These changes correspond to changes made in federal contracting to no longer include zone pay. Likely resulting from that change, received collective bargaining agreements no longer include the zone pay. Based on a lack of federal zone pay and a lack of CBA-reflecting zone pay, such pay is not included in these adopted rates.

COMMENT 9: A commenter suggested that the trucker benefit rate should not decrease from 2022 to this year.

RESPONSE 9: The department has reviewed the trucker benefit rates and determined them to have been appropriately calculated pursuant to applicable administrative rules.

COMMENT 10: A commenter provided additional wage information for plumbers, pipefitters, and steamfitters.

RESPONSE 10: The department has recalculated the rates, as set forth below, based on this new information.

COMMENT 11: A commenter submitted additional wage information for painters and drywall applicators.

RESPONSE 11: The department has recalculated the rates, as set forth below, based on this new information.

COMMENT 12: Commenters submitted additional wage information for sheet metal worker and heating and air conditioner classifications.

RESPONSE 12: The department has recalculated the rates, as set forth below, based on this new information.

COMMENT 13: A commenter suggested that installation of flooring should be within the carpenter classification.

RESPONSE 13: Current classifications are in line with Standard Occupational Codes, which the department utilizes for consistency. Adopting the classification change through an adoption notice would not permit public comment on the classification, and so the department does not make the amendment at this time. However, the 2024 survey to establish wages will state that installation of wood and laminate products, as well as related natural and synthetic flooring will be included within the carpenter classification.

4. The following rates in the Montana Prevailing Wages Rates for Building Construction Services 2024 publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

**Drywall Applicators**

	Wage	Benefit
District 1	<del>\$27.50</del> <u>31.24</u>	\$14.07
District 2	<del>\$27.50</del> <u>31.24</u>	\$14.07
District 3	<del>\$27.50</del> <u>31.24</u>	\$14.07
District 4	<del>\$27.50</del> <u>31.24</u>	\$14.07

**Painters**

	Wage	Benefit
District 1	<del>\$25.19</del> <u>30.00</u>	<del>\$7.65</del> <u>12.81</u>
District 2	\$21.28	<del>\$7.65</del> <u>12.81</u>
District 3	\$25.55	<del>\$7.65</del> <u>12.81</u>
District 4	<del>\$25.83</del> <u>30.00</u>	<del>\$7.65</del> <u>12.81</u>

**Plumbers**

Wage	Benefit
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District 1	<del>\$37.54</del> <u>37.63</u>	\$16.26
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**Heating and Air Conditioning**

	Wage	Benefit
District 1	<del>\$26.50</del> <u>33.00</u>	\$ <del>7.61</del> <u>20.73</u>
District 2	<del>\$25.74</del> <u>33.00</u>	<del>\$10.50</del> <u>20.73</u>
District 3	<del>\$32.43</del> <u>33.00</u>	<del>\$10.50</del> <u>20.73</u>
District 4	<del>\$41.80</del> <u>33.00</u>	\$ <del>8.55</del> <u>20.73</u>

**Sheet Metal Workers**

	Wage	Benefit
District 1	<del>\$30.31</del> <u>33.00</u>	<del>\$13.18</del> <u>20.73</u>
District 2	<del>\$27.84</del> <u>33.00</u>	<del>\$10.25</del> <u>20.73</u>
District 3	<del>\$33.00</del> <u>33.00</u>	<del>\$20.75</del> <u>20.73</u>
District 4	<del>\$33.94</del> <u>33.00</u>	<del>\$20.73</del> <u>20.73</u>

5. The following rates in the Montana Prevailing Wages Rates for Heavy Construction Services 2024 publication, incorporated by reference in the rule, have been amended as follows, stricken matter interlined, new matter underlined:

**Construction Equipment Operators Group 1**

Wage	Benefit
\$30.76	<del>\$14.10</del> <u>14.40</u>

6. The agency has amended ARM 24.17.127 as proposed.

/s/ QUINLAN L. O'CONNOR  
Quinlan L. O'Connor  
Rule Reviewer

/s/ SARAH SWANSON  
Sarah Swanson, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2024.

BEFORE THE BOARD OF PHARMACY  
AND THE BOARD OF VETERINARY MEDICINE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 24.174.401, 24.174.2301, ) ADOPTION  
24.225.301, 24.225.401, and )  
24.225.550 and the adoption of NEW )  
RULES I through IV pertaining to )  
veterinary retail dispensing )

TO: All Concerned Persons

1. On November 3, 2023, the Board of Pharmacy and the Board of Veterinary Medicine (agencies) published MAR Notice No. 24-225-43 regarding the public hearing on the proposed changes to the above-stated rules, at page 1509 of the 2023 Montana Administrative Register, Issue No. 21.

2. On November 28, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agencies have thoroughly considered the comments received. A summary of the comments and the agencies' responses are as follows:

Comment 1: Several commenters thanked the boards for their work on this rules project.

Response 1: The boards appreciate all comments received during the rulemaking process.

Comment 2: One commenter stated these rules seem like an economic bid for pharmacies to take away business from the veterinary profession.

Response 2: The rules do not impact a veterinarian's ability to dispense a medication from the veterinarian's practice and are narrowly drawn to apply to those non-controlled substances prescribed for on-label use in livestock.

Comment 3: One commenter noted that the boards did not address controlled substances rules.

Response 3: Veterinary retail facilities are not allowed to dispense controlled substances per 37-18-804(2)(a), MCA, and the boards are not unnecessarily duplicating the statutory provision in rule.



Comment 4: One commenter noted the boards did not define the veterinary client patient relationship in the proposed rules.

Response 4: The veterinary client patient relationship is already defined at ARM 24.225.301(12). The boards reviewed the definition when considering these rule changes and did not find it necessary to alter the definition.

Comment 5: Several commenters noted that NEW RULE III(3)(a) could be confusing and read as though facilities only need to keep records for the first two years, rather than for two years after the record is made.

Response 5: The boards agree, and the Board of Pharmacy is amending the rule accordingly.

Comment 6: One commenter suggested adding a requirement that veterinary retail facilities have access to a pharmaceutical veterinary reference.

Response 6: The boards cannot make this significant change in the final adoption stage but can add the recommendation to the education project and consider adding the requirement in a future rulemaking.

Comment 7: Several commenters noted that NEW RULE IV(1)(b) says "licensed veterinarian" while NEW RULE III refers to "Montana licensed veterinarian." The commenters suggested utilizing the same term in both rules.

Response 7: The boards agree, and the Board of Veterinary Medicine is amending NEW RULE IV accordingly.

4. The Board of Pharmacy has amended ARM 24.174.401 and 24.174.2301 as proposed.

5. The Board of Pharmacy has adopted NEW RULE II (24.174.1901) as proposed.

6. The Board of Pharmacy has adopted NEW RULE III (24.174.1902) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III (24.174.1902) VETERINARY RETAIL FACILITY REQUIREMENTS (1) and (2) remain as proposed.

(3) All licensed veterinary retail facilities shall:

(a) ~~for two years~~, maintain readily accessible written or electronic records of veterinary prescription drug inventory and prescriptions ~~received~~ for two years after dispensing, and make the records available for board inspection;

(b) through (4) remain as proposed.

AUTH: 37-18-803, MCA

IMP: 37-18-803, 37-18-804, MCA

BOARD OF PHARMACY  
PAUL BRAND, PHARMACIST, PRESIDENT

7. The Board of Veterinary Medicine has amended ARM 24.225.301, 24.225.401, and 24.225.550 as proposed.

8. The Board of Veterinary Medicine has adopted NEW RULE I (24.225.801) as proposed.

9. The Board of Veterinary Medicine has adopted NEW RULE IV (24.225.802) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE IV (24.225.802) VETERINARY DISPENSING TECHNICIAN  
SCOPE OF PRACTICE (1) A veterinary dispensing technician, working in a veterinary retail facility licensed by the Board of Pharmacy, must:

- (a) remains as proposed.
- (b) dispense veterinary prescription drugs upon receipt of a prescription order, standing order, or other order as authorized by a Montana licensed veterinarian;
- (c) through (g) remain as proposed.

AUTH: 37-1-131, MCA  
IMP: 37-1-131, MCA

BOARD OF VETERINARY MEDICINE  
TIA NELSON, DVM, PRESIDENT

/s/ DARCEE L. MOE  
Darcee L. Moe  
Rule Reviewer

/s/ SARAH SWANSON  
Sarah Swanson, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2024.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the amendment of            ) NOTICE OF AMENDMENT  
ARM 38.5.2202 and 38.5.2302                )  
pertaining to pipeline safety                )

TO: All Concerned Persons

1. On November 17, 2023, the Department of Public Service Regulation published MAR Notice No. 38-5-262 pertaining to the proposed amendment of the above-stated rules at page 1596 of the 2023 Montana Administrative Register, Issue Number 22.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ DANIEL POLKOW  
Daniel Polkow  
Rule Reviewer

/s/ JAMES BROWN  
James Brown  
President  
Public Service Commission

Certified to the Secretary of State January 2, 2024.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 44.3.2403 pertaining to )  
determining a valid write-in vote in )  
manually counting and recounting )  
paper ballots )

TO: All Concerned Persons

1. On November 3, 2023, the Secretary of State published MAR Notice No. 44-2-267 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1550 of the 2023 Montana Administrative Register, Issue Number 21.
2. The Secretary of State has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ AUSTIN MARKUS JAMES  
Austin Markus James  
Rule Reviewer

/s/ CHRISTI JACOBSEN  
Christi Jacobsen  
Secretary of State

Dated this 2nd day of January, 2024.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee**

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

#### **Education Interim Committee**

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

#### **Children, Families, Health, and Human Services Interim Committee**

- Department of Public Health and Human Services

#### **Law and Justice Interim Committee**

- Department of Corrections
- Department of Justice

#### **Energy and Telecommunications Interim Committee**

- Department of Public Service Regulation

#### **Revenue Interim Committee**

- Department of Revenue
- Montana Tax Appeal Board

**State Administration and Veterans' Affairs Interim Committee**

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

**Transportation Interim Committee**

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

**Environmental Quality Council**

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

**Water Policy Interim Committee (where the primary concern is the quality or quantity of water)**

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

### Definitions:

**Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

**Montana Administrative Register (MAR or Register)** is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

### Use of the Administrative Rules of Montana (ARM):

Known  
Subject

1. Consult ARM Topical Index.  
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

## RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2023. This table includes notices in which those rules adopted during the period July 21, 2023, through December 22, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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PAGES 1-98

**CHRISTI JACOBSEN**  
SECRETARY OF STATE

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